

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILO, LLC,	:	CIVIL ACTION,
	:	
Plaintiff,	:	NO.: 2:16-cv-05759-RBS
	:	
v.	:	
	:	
VIRGIL PROCACCINO, <i>ET AL.</i> ,	:	
	:	
Defendants.	:	
	:	
VIRGIL PROCACCINO, ARTHUR ELWOOD	:	
and 200 CHRISTIAN STREET PARTNERS, LLC	:	
	:	
Third-party Plaintiffs,	:	
	:	
v.	:	
	:	
AB CONSTRUCTION, LLC DUGGAN	:	
EXCAVATION, E&A DRYWALL CORP.,	:	
HIGH END DESIGN INC., JELD-WEN, INC.,	:	
MAXI-TECH, INC. RED LION INSULATION,	:	
STANLEY STEPHENS CO., INC., AND TAGUE	:	
LUMBER.	:	
	:	
Third-party Defendants.	:	

**MEMORANDUM OF LAW IN SUPPORT OF THIRD-PARTY PLAINTIFFS’  
OPPOSITION TO THIRD-PARTY DEFENDANTS JELD-WEN INC. AND TAGUE  
LUMBER OF MEDIA, INC.’S MOTION TO DISMISS THE THIRD-PARTY  
COMPLAINT**

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**I. MATTER BEFORE THE COURT**

Third-party Plaintiffs 200 CHRISTIAN STREET PARTNERS, LLC, VIRGIL PROCACCINO, and ARTHUR ELWOOD (collectively “200 CSP”) by their attorneys WADE CLARK MULCAHY LLP, hereby submit the instant memorandum of law in support of their Opposition to Third-party Defendants JELD-WEN, INC. and TAGUE LUMBER OF MEDIA, INC.’s (collectively “Defendants”) Motion to Dismiss the Third-Party Complaint.

**II. STATEMENT OF QUESTIONS INVOLVED**

1. Whether Defendants’ Motion to Dismiss the Third-Party Complaint must be denied because 200 CSP has properly stated a claim upon which relief can be granted.

Answer Advocated: Yes.

2. Whether Defendants’ Motion to Dismiss the Third-Party Complaint must be denied because claim preclusion does not bar 200 CSP’s claims against Defendants.

Answer Advocated: Yes.

3. Whether Defendants’ Motion to Dismiss the Third-Party Complaint must be denied because collateral estoppel is unavailable to Defendants in relation to the issues of the economic loss doctrine, gist of the action doctrine, and the applicability of any disclaimer of implied warranties.

Answer Advocated: Yes.

4. Whether Defendants’ Motion to Dismiss the Third-Party Complaint must be denied because the economic loss doctrine and gist of the action doctrine are inapplicable to the present matter.

Answer Advocated: Yes

5. Whether Defendants’ Motion to Dismiss the Third-Party Complaint must be denied because 200 CSP has standing to pursue tort claims against Defendants.

Answer Advocated: Yes.

6. Whether Defendants' Motion to Dismiss the Third-Party Complaint must be denied because any disclaimer of implied warranties was not integral to or explicitly relied upon in 200 CSP's third-party complaint.

Answer Advocated: Yes.

7. Whether Defendants' Motion to Dismiss the Third-Party Complaint must be denied because 200 CSP common law indemnification and contribution claims are proper given Defendants can be found liable on an underlying negligence claim.

Answer Advocated: Yes.

8. Whether Defendants' Motion to Dismiss the Third-Party Complaint must be denied because common law indemnification is available to 200 CSP, as Defendants are solely liable to MILO for any damages they sustained.

Answer Advocated: Yes.

9. Whether Defendants' Motion to Dismiss the Third-Party Complaint must be denied because 200 CSP's claim for contribution may proceed, as 200 CSP, if found to be liable for any damages to MILO, will be joint tortfeasors with Defendants such that contribution is applicable.

Answer Advocated: Yes.

10. Whether Defendants' Motion to Dismiss the Third-Party Complaint must be denied because Defendants' assertion that 200 CSP is forcing Defendants to "exculpate" themselves is both incorrect and untimely for a Fed. R. Civ. P. 12(b)(6) motion.

Answer Advocated: Yes.



### III. STATEMENT OF PROCEDURAL HISTORY AND FACTS

MILO, LLC (“MILO”) sued 200 CSP for various alleged defects with a home located at 501A South 12<sup>th</sup> Street, Philadelphia, Pennsylvania 19147 (the “Home”) that MILO purchased from 200 CSP. *See Pls.’ First Am. Compl. (Exhibit A<sup>1</sup>)*. MILO claims that 200 CSP made various mistakes with respect to the construction of the Home. *Id.*

On May 2, 2018, 200 CSP filed a Third-Party Complaint against the subcontractors responsible for the actual building of the home purchased by MILO. *See Third-party Complaint. (Exhibit B)*. Among other things, the Third-Party Complaint alleges that Jeld-Wen, Inc. manufactured and sold the windows used in the construction of the house to Tague Lumber. *See Exhibit B, ¶ 25*. The Third-Party Complaint also alleges that Tague Lumber sold defective windows and building materials that were used in the construction of the Home. *See Exhibit B, ¶ 28*. The Third-Party Complaint alleges with specificity that Defendants breached implied warranties for merchantability and fitness for a particular purpose and that the windows sold by Defendants and used in the construction of the home were defective and unreasonably dangerous. *See Exhibit B, ¶¶ 42-57*. Further, the Third-Party Complaint alleges Defendants negligently failed to adhere to industry standards and failed to comply with applicable building codes and that, because of these failures, the damages alleged by MILO in the underlying complaint were caused in whole or in part by Defendants’ negligence. *See Exhibit B, ¶¶ 38-39*.

#### A. **The Klehr Litigation**

Currently pending in the Pennsylvania Court of Common Pleas for Philadelphia County is *Klehr, et al. v. Pracaccino, et al.*, Docket No. 02547 (“Klehr Litigation”). *See Third-party Pls.’ Third-party Complaint (Exhibit C)*. That litigation is related to a home purchased by Zachary and

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<sup>1</sup> Unless otherwise noted, all referenced exhibits are attached to this brief.

Deborah Klehr (the “Klehers”) located at 507 S. 12<sup>th</sup> Street, Philadelphia, Pennsylvania. 200 CSP oversaw the construction of the Klehrs home and Defendants manufactured and supplied materials used in the construction of the home. *See Exhibit C*. Following the Klehrs’ initiation of litigation, 200 CSP filed a Third-Party Complaint against the parties responsible for supplying the materials and constructing the Klehrs home, including defendants. *See Exhibit C*. Defendants filed Preliminary Objections to the Third-Party Complaint and on August 16, 2018, the Court issued an order dismissing three of the Third-Party Complaint’s counts against Defendants. *See Klehr Order of 8/16/18 (Exhibit D)*. Notably, the Court did not provide the reasoning behind the decision to dismiss these three counts. *See Klehr Order of 8/16/18*. The Order permitted 200 CSP to file an amended complaint, which was subsequently filed. The Klehr litigation is currently still pending.

On October 8, 2018, Defendants filed a Motion to Dismiss the Third-Party Complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(6). As discussed in greater detail below, 200 CSP’s complaint adequately states claims upon which relief can be granted under Fed. R. Civ. P. 12(b)(6). Subsequently, Defendants Fed. R. Civ. P. 12(b)(6) motion must be denied.

#### **IV. SUMMARY OF ARGUMENT**

Defendants Fed R. Civ. P. 12(b)(6) Motion should be denied for the following reasons. First, 200 CSP has adequately pleaded facts that state a claim upon which relief can be granted sufficient enough to survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss. Second, Defendants have failed to show the concurrence of the three conditions required for claim preclusion to bar further litigation as the *Klehr* litigation is based on a different cause of action and is still currently pending. Third, and like the argument against Defendants’ assertion of claim preclusion, collateral estoppel is unavailable to defendants because the *Klehr* litigation relates to factually separate causes of action and is still currently pending. Fourth, the economic loss and gist of the action doctrines are inapplicable to the present matter because Defendants’ tortious performance was collateral to any

agreement to supply building supplies that existed between Defendants and 200 CSP. Fifth, the disclaimer of warranties Defendants' argue disclaimed an implied warranty of fitness for an ordinary purpose is not explicitly relied upon or integral to the third-party complaint and therefore it should not be considered by this Court within the context of this Fed. R. Civ. P. 12(b)(6) motion. Finally, Defendants' argument that 200 CSP has attempted to shift any burden of proof is untimely for a Fed. R. Civ. P. 12(b)(6) motion.

For the reasons set forth in this memo of law, Defendants' motion must be denied.

## V. **ARGUMENT**<sup>2</sup>

### A. **The Third-party Complaint Alleges Facts With Specificity Sufficient Enough To Survive Defendants' Fed. R. Civ. P. 12(b)(6) Motion.**

A party may move to dismiss a motion for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When considering such a motion, the Court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom and view them in the light most favorable to the non-moving party." *DeBenedictis v. Merrill Lynch & Co.*, 492 F.3d 209, 215 (3d Cir. 2007) (quoting *Rocks v. City of Phila.*, 868 F.2d 644, 645 (3d Cir. 1989)).

Except as provided in Fed. R. Civ. P. 9, a complaint is sufficient if it complies with Fed. R. Civ. P. 8(a)(2), which requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(a)(2) does not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550

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<sup>2</sup> The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1367. "When a district court[]... hears a state-law claim based on its supplemental jurisdiction ... the court must determine whether ... a matter is substantive or procedural. *Chin v. Chrysler LLC*, 528 F.3d 272, 278 (3d Cir. 2008) (citing *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938); *Simmons v. City of Phila.*, 947 F.2d 1042, 1085 (3d Cir. 1991)). Here, Fed. R. Civ. P. 12(b)(6) procedure and standard are guided by federal law. *Id.* The state-law claims falling under this Court's supplemental jurisdiction are substantive and the court should therefore apply the law of Pennsylvania. *See Am. Stores Props., Inc. v. Spotts, Stevens & McCoy, Inc.*, 648 F.Supp.2d 707, 712 (E.D. Pa. 2009).

U.S. 544, 570 (2007). The requirement that a pleading contain a short and plain statement of a claim showing that the pleader is entitled to relief does not require detailed factual allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009).

Although “conclusory” or “bare-bones allegations” will not survive a motion to dismiss, a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits. *Id.*, at 210; *See also Phillips v. Cty. of Allegheny*, 515 F.3d 224, 230 (3d Cir. 2008). A well-plead complaint should not be dismissed simply because “it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely.” *Twombly*, 550 U.S. at 556. Finally, in deciding a Rule 12(b)(6) motion, the Court limits its inquiry to the facts alleged in the complaint and its attachments, matters of public record, and undisputedly authentic documents if the complainant’s claims are based upon these documents. *See Jordan v. Fox, Rothschild, O’Brien & Frankel*, 20 F.3d 1250, 1261 (3d Cir. 1994); *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993).

Here, the Complaint alleges that Jeld-Wen is engaged in the business of manufacturing, selling and distributing windows and/or window components. *See Exhibit B*. The Complaint also alleges that Tague lumber is engaged in the business of selling and/or distributing windows and/or window components. *See Exhibit B*. The Complaint further alleges that the windows manufactured by Jeld-Wen and sold by Tague were defective, unreasonably dangerous, and were the cause and/or contributed to the damages alleged in MILO’s underlying Complaint. *See Exhibit B*. Viewing these allegations as true, in the light most favorable to 200 CSP, and drawing all reasonable inferences from them, 200 CSP has alleged sufficient facts to establish its right to relief. For those reasons, defendants Rule 12(b)(6) motion must be denied.

**B. Claim Preclusion Does Not Bar 200 CSP’s Claims for Negligence, Strict Products Liability, and Breach of Implied Warranty Because Defendants**

**Have Failed To Satisfy The Three Requirements Necessary For Claim Preclusion To Apply.**

Defendants' assertion that claim preclusion requires dismissal of multiple counts of the complaint is without merit because defendants have failed to show the concurrence of the three conditions required before claim preclusion can apply. Claim preclusion requires: (1) a final judgment on the merits in a prior suit involving; (2) the same parties or their privities; and (3) a subsequent suit based on the same cause of action. *Board of Trustees of Trucking Employees Welfare Fund, Inc. v. Centra*, 983 F.2d 495 (3d Cir. 1992).

In their motion, defendants state "[The Klehr Court] rendered a final judgment on the merits of [200 CSP]'s negligence, strict liability, and breach of implied warranty claims." However, there can be no final judgment on the merits for claims that have been dismissed when the underlying litigation is still pending, as it is in the *Klehr* litigation. It is well settled in Pennsylvania that an appeal will lie only from a final order unless otherwise permitted by statute; a final order is one which ends the litigation or disposes of the entire case. *Praisner v. Stocker*, 459 A.2d 1255, 1258 (Pa. Super. 1983). Generally, an order which dismisses some but not all counts of a multi-count complaint is interlocutory and not appealable. *Giannini v. Foy*, 421 A.2d 338 (Pa. Super. 1980). Conversely, an order is interlocutory and not final unless it effectively puts the litigant out of court. *Id.*, at 339 (citing *Allessandro v. State Farm Mutual Auto. Ins. Co.*, 409 A.2d 247 (Pa. 1979)).

In the *Klehr* litigation, the Court issued an Order dated August 16, 2018 dismissing three counts of 200 CSP's Complaint filed against defendants. See **Exhibit D**. However, the Order also permitted 200 CSP to file an Amended Third-Party Complaint, which has subsequently been filed, and, more notably, did not dismiss all the counts within the complaint. See **Exhibit D**. Because litigation is still pending in the *Klehr* litigation there has been no final judgment on the merits, therefore claim preclusion is not applicable in the present matter.

Further, the matter before the court is not a subsequent suit based on the same cause of action. The focus for determining what constitutes a “cause of action” is fact driven and the Court must determine whether there is “essential similarity of the underlying events giving rise to various claims[.]” *Davis v. United States Steel Supply*, 688 F.2d 166, 171 (3d Cir. 1982). As previously noted, the *Klehr* litigation stems from construction issues with a home owned by the Klehrs located at 507 South 12<sup>th</sup> Street in Philadelphia. *See Exhibit C*. The matter before this Court stems from issues with a home owned by MILO located at 501A South 12<sup>th</sup> Street in Philadelphia. *See Exhibit C*. The litigation in these two cases involve two separate properties and two separate owners. The litigation in both cases is factually separate and therefore not based on “the same cause of action.” For the reasons stated above, claim preclusion is not an available to defendants and their motion should therefore be denied.

**C. Defendants Assertion That Collateral Estoppel (Otherwise Referred to as Issue Preclusion) Bars Several of 200 CSP’s Claims Is Without Merit As Defendants Have Failed To Satisfy The Requirements For The Doctrine To Apply.**

Defendants have failed to show that the economic loss doctrine, gist of the action doctrine and the validity of their disclaimer of implied warranties have been previously litigated or that these issues were decided on the merits of a final and valid decision. Therefore, collateral estoppel does not preclude 200 CSP from litigating these issues in this separate matter. A party asserting collateral estoppel must prove: (1) the previous determination was necessary to the decision; (2) the identical issue was previously litigation; (3) the issue was actually decided on the merits and the decision was final and valid; and (4) the party being precluded from re-litigating the issue was adequately represented in the previous action. *See Jean Alexander Cosmetics, Inc. v. L’Oreal USA, Inc.*, 458 F.3d 244, 249 (3d Cir. 2006); *Novartis Pharms. Corp. v. Abbott Labs.*, 375 F.3d 1328, 1333 (Fed. Cir. 2004).

Contrary to what defendants assert, there is no evidence to suggest that the court in the *Klehr* litigation dismissed 200 CSP's claims on the basis of the economic loss doctrine, gist of the action doctrine, or that their disclaimer was proper. The order they reference states simply that three counts have been dismissed, but the order provides no reasoning behind their dismissal. *See Exhibit B*. Defendants impermissibly ask this Court to speculate as to why the court in the *Klehr* litigation dismissed these counts. Further, as discussed above, the order from the *Klehr* litigation that dismisses three counts of that complaint is not a final and valid decision. Because defendants have failed to satisfy all of the requirements of the doctrine of collateral estoppel, this Court should deny their motion.

**D. 200 CSP's Claims Against Defendants Are Not Barred by the Economic Loss Doctrine or Gist of the Action Doctrine Because Jeld-Weld's Tortious Performance Was Collateral to Its Agreement to Supply Windows and Window Components.**

By asserting the economic loss doctrine and gist of the action doctrine, Defendants are attempting to force this Court to prematurely rule on what types of damages MILO, 200 CSP, or any other party may recover in this action. At this early stage in litigation, with discovery barely begun, more facts need to be developed regarding the types of harm suffered by MILO. Until that time, the economic loss doctrine should not be applied to bar any of the Counts contained within the Third-Party Complaint.

Additionally, the gist of the action doctrine does not apply to bar 200 CSP's claims merely because Defendants may have provided a warranty for its windows and window components. The gist of the claim must be determined by locating the duty that was breached. In this case, that duty was a greater duty imposed on Defendants by law, namely to not negligently manufacture and sell windows or window components, as opposed to the mere contractual obligation to supply windows and window components.

For these reasons, explained more fully below, this Court should deny Defendants' motion.

**1. Economic Loss Doctrine**

Defendants are asking this Court to make a premature determination regarding the type of damages and relief that MILO are entitled to. MILO's First Amended Complaint makes demands for actual, treble, compensatory, punitive, and/or consequential damages "in an amount to be determined at trial" to compensate for generalized alleged harms to MILO and the Home. *See Exhibit A*. At this early stage in litigation, it cannot be determined whether MILO seek compensation merely for damage to the Home, or for additional property or personal injuries, as well. As such, Defendants' preliminary objection based on the economic loss doctrine should be overruled.

Generally, the economic loss doctrine bars recovery in tort for commercial parties who purchase defective products that cause damage only to the *product itself*. *See E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 868–72 (1986) (emphasis added). But it does not apply to bar recovery for personal injury or damage to "other property." *See id.*

Discovery in this case has only just begun. As such, MILO's claimed damages have yet to be fully assessed, and it is too early to properly categorize them. While many, but not all, of MILO's allegations refer to the construction, the First Amended Complaint states several times that both MILO and the Home have suffered consequential damage. *See Exhibit A*. It is possible that MILO have suffered personal injuries and personal property loss because of the allegedly-defective construction. Therefore, granting Defendants' motion would completely cut MILO, 200 CSP, and other parties off from relief that they may ultimately be entitled to upon the introduction of such evidence.



Defendants argues that the “product itself” in this case is the completed Home and that recovery in tort is foreclosed because the window, a component of the Home, does not qualify as “other property.” However, it cites no binding precedent for this proposition. Other federal district court cases not cited by Defendants, but just as persuasive, suggest that components or different areas of a completed home may qualify as “other property.” *See, e.g., Pansini v. Trane Co.*, No. 17-3948, 2018 WL 1172461 (E.D. Pa. Mar. 6, 2018); *Gadley v. Ellis*, No. 3:13-17, 2015 WL 2345619 (W.D. Pa. May 15, 2015).

For example, in *Gadley v. Ellis*, the plaintiff’s motion for reconsideration was granted to permit the plaintiff to introduce evidence of water damage to various areas of his home after the defendant’s motion for partial summary judgment was granted on the basis of the economic loss doctrine. *See Gadley*, 2015 WL 2345619, at \*4. The court stated that newly acquired evidence of damage to the home’s timber frame, walls, ceilings, floors, and contents resulting from the defective roof panels could establish damages that fall outside of the “product itself” limitation. *See id.* at \*5. In *Pansini v. Trane Co.*, while holding that recovery in tort for a “faulty HVAC unit causing homeowners to hire a technician” was barred by the economic loss doctrine, the U.S. District Court for the Eastern District of Pennsylvania stated that the *Gadley* court had correctly determined that other areas of a home or the personal property therein fall outside of the “product itself” when dealing with houses. *See Pansini*, 2018 WL 1172461, at \*5 (“A faulty HVAC unit causing homeowners to hire a technician is a far cry from . . . leaky roof panels causing water damage inside a home . . . .” (citing *Gadley*, 2015 WL 2345619, at \*6)).

As in *Gadley*, the record in this case needs to be developed further before the economic loss doctrine can be said to bar recovery in tort. It is not clear (1) that MILO is claiming only damage to the home or (2) that various components or areas of the Home do not qualify as “other

property.” There is currently too much uncertainty regarding the nature of the damages, and Defendants’ motion should be denied.

## 2. Gist of the Action Doctrine

200 CSP’s negligence and strict products liability claims are not barred by the gist of the action doctrine because the alleged torts were collateral to the performance of any contract. This analysis is undertaken with the knowledge that because the discovery process is in its early stages, the exact language of any contract between 200 CSP and Defendants is unknown. Therefore, the gist of the action doctrine is unavailable to defendants at this stage. If, however, this court were to find that such a contract existed, then the gist of the action doctrine would still not preclude 200 CSP’s claims against Defendants.

The touchstone for the gist of the action analysis is the duty-based framework explained by the Pennsylvania Supreme Court in *Bruno v. Erie Insurance Co.* See 106 A.3d 48, 63 (Pa. 2014); see also *Dommel Props. LLC v. Jonestown Bank and Tr. Co.*, 626 F. App’x 361, 365 (3d Cir. 2015). The mere fact that a contractual relationship brought two parties together does not automatically result in a tort claim being disqualified under the gist of the action doctrine. See *Bruno*, 106 A.3d at 57.

The nature of the duty is determinative, and the issue is whether the defendant has breached some specific duty imposed solely because of the contract or a more general duty imposed by law. See *id.* at 68; *Harleysville Homestead Inc. v. Lower Salford Twp. Auth.*, 980 A.2d 749, 753 (Pa. Cmwlth. 2009). When the defendant has tortuously performed the contract, the contract is merely the vehicle that established the relationship between the two parties. See *Bruno*, 106 A.3d at 70 (quoting *Meyer v. Cmty. College of Beaver Cty.*, 965 A.2d 406, 411 (Pa. Cmwlth. 2009), *vacated on other grounds*, 2 A.3d 499 (Pa. 2010)).

Pennsylvania state courts have previously approved of reasoning that would permit negligence and fraud claims to survive preliminary objections based on the gist of the action doctrine despite the existence of a contract. *See Honeywell Int'l Inc. v. Archdiocese of Phila.*, No. 2219 (Phila. Cty. Ct. C.P. Oct. 24, 2001) (citing *Grode v. Mutual Fire, Marine, and Inland Ins. Co.*, 623 A.2d 933, 937 (Pa. Cmwlth. 1993)). In *Grode v. Mutual Fire, Marine, and Inland Insurance Co.*, the Commonwealth Court held that tort claims could survive the gist of the action doctrine when the plaintiff is alleging tortious performance, rather than a failure to perform. *See Grode*, 623 A.2d at 936. In *Honeywell International Inc. v. Archdiocese of Philadelphia*, the Philadelphia Court of Common Pleas determined the facts to be inapposite to *Grode*, but the court still noted its approval of the reasoning in *Grode*.

Similar to *Grode*, 200 CSP is not alleging that Defendants failed to perform. Rather, the claim is that Defendants acted tortiously. The duty breached was not one imposed by the warranty Defendants claim applies. The duty breached was a more general duty that Defendants have to refrain from negligently manufacturing and selling windows or placing windows into the stream of commerce that pose unreasonable risks to foreseeable users.

**E. The disclaimer of warranties discussed at length in defendants' Rule 12(b)(6) motion is not integral to or explicitly relied upon in 200 CSP's complaint and they should be excluded from this Courts consideration of defendants' Rule 12(b)(6) motion.**

In deciding a Rule 12(b)(6) motion, the Court limits its inquiry to the facts alleged in the complaint and its attachments, matters of public record, and undisputedly authentic documents if the complainant's claims are based upon these documents. *See Jordan*, 20 F.3d at 1261 (3d Cir. 1994); *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). "A document integral to or explicitly relied upon in [a] complaint may be considered

without converting the motion to dismiss into one for summary judgment.” *Schmidt v. Skolas*, 770 F.3d 241, 245 (3d Cir. 2014).

Defendants assert that the “Jeld-Wen Warranty” and “complete Tague Terms and Conditions and Warranty” (the “Warranties”) are documents integral to the complaint and must therefore be considered in the context of their motion to dismiss. Implicit in this argument is the notion that the Warranties are both applicable to any commercial transaction that occurred between 200 CSP and defendants, and that these Warranties are legally sufficient. However, the complaint does not claim that a written warranty was violated. *See Exhibit B*. The complaint’s only reference to a warranty is the allegation relating to a warranty of fitness for an ordinary purpose. *See Exhibit B*.

Moreover, although the Defendants detail the contents of the disclaimers contained within the Warranties at length, they fail to assert that these warranties were applicable to the commercial transaction between 200 CSP and defendants. At this stage, this Court is tasked with reviewing the complaint under the familiar *Twombly* and *Iqbal* standards. 550 U.S. 544; 556 U.S. 662. The question here is whether, after accepting as true all allegations in the complaint along with all reasonable inferences which can be drawn from them, 200 CSP has pleaded enough facts to state a claim to relief that is plausible on its face. *Twombly*, 550 U.S. at 570. Defendants are essentially asking this Court to incorporate into the complaint a warranty that is not referenced -and then find both that this warranty is enforceable against 200 CSP and that the disclaimer contained within this warranty requires dismissal of plaintiff’s claims. What defendants are asking this Court to consider is outside the scope of a 12(b)(6) motion and their motion should therefore be denied.

**F. 200 CSP’s Common Law Indemnification and Contribution Claims Are Proper Because Defendants and Hague Lumber are Either Solely or Jointly Liable for the Klehr Injuries.**

In Pennsylvania, common law indemnity is available for any liability sounding in tort. *EQT Prof. Co. v. Terra Servs., LLC*, 179 F.Supp.3d 486 (W.D. Pa. 2016). Common law indemnity “shifts the entire loss from one who has been compelled, by reason of some legal obligation, to pay a judgment occasioned by the initial negligence of another who should bear it.” *Willet v. Pennsylvania Med. Catastrophe Loss Fund*, 702 A.2 850, 854 (Pa. 1997). Indemnity is granted where the “community opinion would consider that in justice the responsibility should rest upon one rather than the other.” *Id.* The Pennsylvania Superior Court has found common law indemnification for the seller of a dump truck against the manufacturer of that dump truck’s tailgate assembly where the tailgate malfunctioned and caused the death of another individual. *Walasavage v. Marinelli*, 483 A.2d 509, 512 (Pa. Super. 1984).

In Pennsylvania, contribution is available for joint tortfeasors to ensure that each individual pays for an equitable share of their liability for the harms produced. 42 Pa.C.S.A. § 8324. The Pennsylvania Contribution Among Joint Tortfeasors statute defines joint tortfeasors as “two or more persons jointly or severally liable in tort for the same injury to persons or property, whether or not judgment has been recovered against all or some of them.” 42 Pa.C.S.A. § 8322. In determining “whether the harm to a plaintiff is capable of apportionment, that is, whether the defendants are separate or joint tortfeasors,” courts consider several factors: the identity of a cause of action against each of two or more defendants; the existence of a common, or like duty; whether the same evidence will support an action against each; the single, indivisible nature of the injury to the plaintiffs; identity of the facts as to time, place or result; whether the injury is direct and immediate, rather than consequential; responsibility of the defendants for the same injury as opposed to the same act. *Voyles v. Corwin*, 441 A.2d 381, 383 (Pa. Super. 1982) and *Harka v. Nabati*, 487 A.2d 432, 434 (1985), both citing Prosser, Law of Torts, § 46 n. 2 (4th Ed. 1971).

In *Smith v. Pulcinella*, the Court examined these factors in a situation involving a multi-car crash. 656 A.2d 494, 495 (Pa. Super. 1995). In that case, Smith's car was struck from the rear by Pulcinella's car. *Id.* A police officer arrived and both cars were placed on the shoulder of the road. *Id.* Soon after, a third car struck Pulcinella's car in the rear, forcing it into Smith's car for the second time. *Id.* The Court found that Pulcinella and the third driver were joint tortfeasors. *Id.* at 498. In evaluating the factors for contribution, the Court highlighted that the duty of care owed by Pulcinella and the third driver Smith was identical, and both were negligent in an identical fashion and at almost the same time and place in failing to control their vehicles in rainy weather conditions. *Id.* at 497. Additionally, the harm caused to Smith was single and indivisible, with Smith's medical expert being unable to differentiate between injuries sustained on first impact and injuries on second impact, and Smith would not have been in position to be struck by second vehicle but for defendant's negligence. *Id.*; see also *Neal v. Bavarian Motors, Inc.*, 882 A.2d 1022, 1028 (Pa. Super. 2005) (Finding a car dealership and third-party lender to be jointly liable under the Unfair Trade Practices and Consumer Protection Law for selling the plaintiff a stolen car because of the third-party lenders "inexcusable" failure to comply with required finance procedures).

Given the high bar to grant a 12(b)(6) motion, 200 CSP has alleged sufficient facts to substantiate its claims for common law indemnification and contribution. It is not "clear" that 200 CSP will be unable to prove facts that will sustain its burden to demonstrate indemnity and contribution. Following the *Walasavage* case, manufacturers can be held to indemnify those consumers harmed by their negligently constructed products. *Walasavage*, 483 A.2d at 512. The pleaded facts allege that Defendants manufactured and sold the defective windows which were installed in the MILO home, which subsequently caused water damage in the Home. See **Exhibit A**. 200 CSP did not undertake any construction work on the MILO home and did not alter or install

the windows. Based on those allegations, Defendants can be held solely responsible for MILO's purported negligence claim. MILO brought claims against 200 CSP instead of Defendants such that 200 CSP is facing potential liability for damages that they did not cause. That is the precise problem for which common law indemnification was enacted to remedy.

Alternatively, if this Court finds that 200 CSP is liable for damages MILO alleges, Defendants shares in that liability over and above that of 200 CSP as stated above. Applying the factors for contribution from the *Voyles* case, there is a single, indivisible injury of water damage suffered by MILO at their home due to the defective windows that were installed. That water damage is alleged to have been caused by 200 CSP, but Defendants' defective windows in fact caused the damage. Likewise, the facts regarding time, place, and result of the alleged negligence are common as to 200 CSP and Defendants because both parties are alleged to have been negligent in their duties to MILO to ensure their home complied with the applicable building codes and standards. Although 200 CSP denies any liability for MILO's damages, the same evidence supporting MILO's negligence claims against it will support a claim against Defendants. Furthermore, the injury of water damage is common as to both 200 CSP and Defendants. Despite Defendants' attempts to avoid liability for its defective windows, Defendants are at least partially liable for the damages suffered by MILO. 200 CSP's contribution claim against Defendants is therefore proper.

Defendants rely on the *Preferred Contractors Ins. Co., RRG, LLC v. Sherman* case to support its contention that indemnification and contribution claims cannot support the third-party of a defendant if there are no other accompanying claims. \_\_A.3d\_\_, \_\_ (Pa. Super. 2018) (slip op. at \*10), decided on July 24, 2018. In the *Preferred* case, the insurer, Preferred Contractors Insurance Company ("PCIC") sought to disclaim coverage for damages stemming from their general contractor insured, Sherman. *Id.* at 1. The insured engaged an insurance broker, the Brown

Agency, who PCIC alleged was negligent in its handling of the insurance policy application. PCIC also alleged contribution and indemnity claims. *Id.* at 3. The Pennsylvania Superior Court, after discovery ended, dismissed the negligence claims, and as such there was no underlying tort for which to hold the Brown Agency liable. *Id.* at 10.

Central to the Court's reasoning was the fact that no other claims underpinning the indemnification and contribution were pleaded against the defendant sought to be joined. *Id.* The factual situation in *Preferred* is distinguishable from the instant situation because MILO's negligence claim against 200 CSP undergirds the common law indemnification and contribution alleged against Defendants. Furthermore, the negligence claim was only denied after discovery had ended, so the Court was well apprised of the evidence that could or could not support its contribution and indemnity claims.

For those reasons, Defendants' motion should be denied.

**G. Defendant's Argument That 200 CSP Has Attempted to Shift The Burden of Proof Is Untimely For a Fed. R. Civ. P. 12(b)(6) Motion.**

Defendants incorrectly state that 200 CSP is attempting to shift the burden of proof in order to force defendants to "exculpate themselves." This argument is both erroneous and untimely for a F.R.C.P. 12(b)(6) motion because "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). In determining whether a complaint is sufficient, the court must accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading, the plaintiff may be entitled to relief. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 209 (3d Cir. 2009).

Defendant's reliance on *Pennfield Corp v. Meadow Valley Electric Co.* is misplaced. 604 A.2d 1082 (Pa. Super. Ct. 1992). There, Pennfield Corp. alleged that a faulty electrical cable in a



ventilation system had caused the death of several pigs they owned. *Id.*, at 1083. In the complaint Pennfield Corp. alleged that they had obtained the electrical cable responsible for the failed ventilation system from *either* Meadow Valley Electric Company *or* Tri-State Electrical Supply. *Id.* (emphasis added). The court rejected this “alternative liability” approach, finding that plaintiff was essentially requiring both defendants to prove that they were not culpable. Here, 200 CSP leaves no doubt as to who manufactured and sold the defective windows. There is no allegation that more than one window manufacturer or distributor may be possible for the defective windows. Therefore, the Court’s holding in *Pennfield Corp. v. Meadow Valley Electric Co.* is inapplicable to the present matter.

Contrary to defendants’ assertion, 200 CSP has pleaded sufficient factual matter, which if accepted as true, states a claim to relief that is plausible on its face. *See Exhibit B.* Plaintiffs allege that Defendants manufactured the defective windows that were used in the construction of the Home, that Tague sold the defective windows that were used in the Home and that the defective windows caused the harm alleged by MILO in the underlying complaint. *See Exhibit B.* After taking these factual allegations as true and viewing them in the light most favorable to 200 CSP, it is apparent that 200 CSP may be entitled to relief. Defendants’ argument is untimely and outside the scope of what is considered by a court reviewing a Fed. R. Civ. P. 12(b)(6) motion and their motion should therefore be denied.

## **VI. RELIEF**

For the foregoing reasons, Robertshaw respectfully moves this Honorable Court for an order that: (A) DENIES Defendants JELD-WEN, INC. and TAGUE LUMBER OF MEDIA, INC.’s Motion to Dismiss the Third-Party Complaint; and (B) grants such other, further and different relief as this Court deems just and proper.

Dated: Philadelphia, PA  
October 29, 2018

WADE CLARK MULCAHY LLP

*/s/ Robert J. Cosgrove*

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By: Robert J. Cosgrove, Esq.  
Attorney ID #204665

*/s/ Alexandra M. Perry*

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# EXHIBIT A

RBS

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILO, LLC

*Plaintiff*

v.

VIRGIL PROCACCINO,  
ARTHUR ELWOOD, and  
200 CHRISTIAN STREET PARTNERS

*Defendants*

Civil Action No.: 16-cv-5759

**FILED**  
JAN 30 2017  
KATE BARKMAN, Clerk  
By \_\_\_\_\_ Dep. Clerk

**FIRST AMENDED COMPLAINT**

Plaintiff MILO, LLC (“MILO”) by and through its attorneys, Bochetto & Lentz, P.C. (“B&L”), avers as follows in support of its Complaint against Defendants Virgil Procaccino (“Procaccino”), Arthur Elwood (“Elwood”) and 200 Christian Street Partners (“200 CSP”) (“collectively the “Defendants”).

**I. NATURE OF THE ACTION**

1. This case is brought primarily under the Pennsylvania Unfair Trade Practices and Consumer Protection Law regarding Defendants’ fraudulent building, marketing, and selling to Plaintiff MILO an unsafe and defectively constructed home priced at almost **\$2,000,000**.

2. David and Beth Ferreira are the parents of two young children – a 2-month old newborn and a 20-month old toddler at the time – who sought to occupy the newly-constructed home located at 501A South 12<sup>th</sup> Street (“the Home”) with the intention of raising their family

(the “Ferreiras”) in the City of Philadelphia and experiencing all that city life has to offer for young families.

3. MILO owns the Home for the benefit of the Ferreiras’ children and at all times material David Ferreira acted as an agent of MILO in negotiating the purchase of the Home.

4. Procaccino and Elwood own and operate Defendant 200 CSP for the purpose of building and selling luxury homes in the City of Philadelphia, and were responsible for the construction of the Home.

5. Procaccino and Elwood specifically focus their marketing on the “\$1 million-plus market” by touting “the wow factor” of their homes and expressly representing that they do not “skimp” on construction. (*See Exhibit A, August 18, 2014 Philadelphia Inquirer Article “Center City residential developers build on the ‘wow’ factor.”*)

6. The Defendants – by and through representations made individually by Procaccino and Elwood – directly represented to David Ferreira and MILO that the Home was not only designed and built according to applicable building codes, but was constructed according to best standards in the industry, and according to the architectural drawings presented to David Ferreira and MILO.

7. These representations were materially false.

8. In reliance upon Defendants’ representations, David Ferreira caused MILO to purchase the Home for \$1,955,000.

9. In making the decision to purchase the Home from Defendants, MILO reasonably relied on the express and implied representations of quality, workmanship and the promises of full compliance with all applicable building codes and industry standards.

10. As actually constructed, the Home was so riddled with safety hazards and construction defects that the Ferreiras could not live there without risk to their health and safety, and as a result, shortly after moving into the Home, the Ferreiras were forced to relocate in November 2015, and seek ongoing medical advice to monitor the respiratory problems that their newborn child experienced while living in the Home.

11. As a result of these significant defects and safety hazards, MILO has sustained and continues to sustain the following ongoing damages:

- i. Ownership of a Home in need of profound remediation;
- ii. Diminution of the value of the Home, and perhaps the reality that they may never be able to sell the Home;
- iii. Significant and ongoing professional inspection, engineering and remediation fees;
- iv. Both temporary and permanent relocation costs; and
- v. Attorneys' fees and costs of suit.

## **II. PARTIES**

12. Plaintiff, MILO LLC., is a limited liability company formed in Delaware that has a registered office at 1600 Greentree Drive, Suite 101, Dover DE 19904. MILO is the record owner of the Home, for the benefit of David and Beth Ferreira's children.

13. Defendant, 200 Christian Street Partners, is a limited liability company formed in Pennsylvania and may be served at 2320 South Street, Philadelphia, PA 19146.

14. Defendant, Virgil Procaccino, is an individual who may be served at 2320 South Street, Philadelphia, PA 19146. Procaccino is a partner in 200 CSP and individually made many of the fraudulent representations directly to Plaintiff MILO and David Ferreira.

15. Defendant, Arthur Elwood, is an individual who may be served at 2320 South Street, Philadelphia, PA 19146. Elwood is a partner in 200 CSP and individually made many of the fraudulent representations directly to Plaintiff MILO and David Ferreira.

### **III. JURISDICTION & VENUE**

16. This matter is properly filed in this District, as there is complete diversity between Plaintiff and Defendants.

17. The amount in controversy exceeds the sum of \$150,000, exclusive of interest fees and costs.

18. Jurisdiction is asserted pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship between Plaintiff MILO, LLC, a citizen of the State of Delaware and all Defendants, who are citizens of the Commonwealth of Pennsylvania.

19. Venue is proper in this District pursuant to 28 U.S.C. § 1391, as a substantial number of acts giving rise to this claim occurred in the Eastern District of Pennsylvania.

20. This Court has both general and specific personal jurisdiction with respect to all Defendants.

### **IV. FACTS COMMON TO ALL COUNTS**

#### **A. The Sale of the Home.**

21. David Ferreira and his wife Beth are a married couple with two young sons, ages 20 months, and 2 months at the time that the Ferreiras moved into the Home.

22. MILO is a limited liability company created solely to purchase and hold assets in trust for David and Beth Ferreiras' children.

23. In or about 2014, MILO authorized David Ferreira to look for a new home in the City of Philadelphia to serve as the residence of the Ferreriras.

24. MILO specifically sought a home that would allow the Ferreriras to live and raise their children in the City of Philadelphia, as well as being MILO's sole asset for the benefit of the Ferreriras' children.

25. Living in Philadelphia was particularly important as a result of Beth Ferreira's former career as a homicide prosecutor and Assistant Chief in the City's District Attorney's office, and David Ferreira's work in finance at a Philadelphia-based firm.

26. MILO and the Ferreriras specifically sought to purchase a newly constructed home that would not require any repair or rehabilitation and would not contain any defects that would necessitate expensive remediation or interruption in the raising of the Ferreriras' two children.

27. Defendants routinely and regularly represented themselves to the public as high-end builders of homes in the "\$1,000,000 plus market" in Philadelphia, which was the market MILO and the Ferreriras were interested in.

28. Approximately three months before MILO purchased the Home, Procaccino and Elwood were interviewed by the Philadelphia Inquirer, during which they touted their superior homes, including the "wow factor" of the design, and publicly represented that they do not "skimp" on the construction or materials. (*See* Exhibit A.)

29. Defendants expressly represented to David Ferreira and MILO that that the design and construction of the home was of extremely high quality and according to best-standards in the industry, and that any minor defects in the Home would be remediated prior to closing.



30. As a result of these representations, on or about November 11, 2014, David Ferreira entered into an Agreement of Sale for the purchase of the Home. (See Exhibit “B,” the Agreement of Sale.)

31. The Agreement of Sale was expressly assignable by him.

32. Thereafter, David Ferreira assigned the Agreement of Sale to MILO.

33. MILO made settlement on the Home on January 15, 2015.

34. The Ferreriras moved into the Home in March 2015.

35. As detailed below, despite Defendants representations of superb quality, workmanship and design – including the “wow” factor – Defendants failed to build a home that complied with even basic building codes and minimally accepted standards of workmanship and construction.

36. The Agreement of Sale attempts to disclaim all implied warranties, but such a disclaimer is void under Pennsylvania law for public policy reasons, as there was absolutely no discussion or negotiation regarding the important legal ramifications of any purported renunciation of MILO’s implied warranty rights, or contradiction of all its marketing representations. (See *Tyus v. Resta*, 476 A.2d 427, 328 Pa.Super.11 (1984); see also *Bennet v. A.T. Masterpiece Homes at Broadsprings, LLC*, 40 A.3d 145 (Pa.Super. 2012).)

37. Accordingly, regardless of any purported and unenforceable disclaimer, Defendants owed Ferreriras the implied warranties of: 1) a safe and habitable structure, free of faulty materials; 2) construction in a workmanlike manner; 3) construction according to sound building and engineering standards; and 4) compliance with all applicable building codes.

38. As a direct and proximate result of Defendants’ actions, MILO incurred significant damages as more fully described below.

**B. Water Penetration Problems Commence.**

39. The Home began experiencing serious problems with water infiltration prior to the settlement of the Home.

40. During a walkthrough inspection of the property prior to settlement the Ferreiras identified a leak in the master bedroom and reported it to the Defendants.

41. Procaccino expressly assured the Ferreiras that the issue was minor, and that they would fix the leak in the master bedroom and remediate the water damage.

42. Procaccino further represented that the leak was isolated to the master bedroom. The initial remediation work was added as a condition of settlement to an addendum to the Agreement of Sale. (*See Exhibit C, October, 28, 2014 Addendum.*)

43. Based on such express assurances by Procaccino – particularly that the issue was minor and isolated to the bedroom – the Ferreiras agreed to proceed with Settlement.

44. As it turned out, such representations by Procaccino were utterly false, and Procaccino knew or should have known that the leak in the master bedroom was caused by major defects in the building envelope that allowed moisture to seep into the Home..

45. Immediately after settlement on the Home, the Ferreiras discovered a leak in the unfinished basement and reported it to Defendants.

46. Procaccino agreed to repair the cause of the water infiltration and both Procaccino and Elwood expressly represented that they would “make it right.”

47. Further, both Procaccino and Elwood represented that the basement leak was repaired and would not reappear..

48. At no time did Defendants reveal to Plaintiff or the Ferreiras that the cause of either incident of water infiltration was the defective construction of the Home.

49. As a result, Defendants lulled Plaintiff and the Ferreiras into believing the initial water infiltration in the master bedroom had been repaired.

50. However, in February 2015, immediately prior to the Ferreiras moving into the Home, the Ferreiras discovered a mushroom fungus growing out of the floorboards in the second-floor bedroom that was meant for occupation by their then twenty-month old son.

51. The Ferreiras were alarmed at the presence of fungal growths in the Home, let alone in the room in which a child was expected to sleep.

52. Again, Defendants represented to the Ferreiras that the mushroom was caused by a limited problem with the bedroom window and represented that Defendants repaired the limited problem.

53. Procaccino expressly represented that he, Elwood and 200 CSP would ensure that the bedroom window would be repaired and that any fungal growth would be properly remediated.

54. Once again, Procaccino also expressly represented that the moisture intrusion was isolated and would not re-appear.

55. Defendants did not reveal that the cause of the fungal growth was water infiltration from the defective construction of the Home.

56. Plaintiff and the Ferreiras relied on Defendants representations that the fungal infestation had been fully remediated and would not re-occur.

57. Despite Defendants' representations that the cause of the moisture and water infiltration had been repaired, the Home continued to experience water infiltration which caused fungal and microbial growths.

58. Almost immediately after the Ferreiras moved into the Home, further evidence of infiltration began to appear.

59. The water infiltration in the master bedroom reoccurred in and around the Parallam beam, and a further leak began in a second area in the ceiling of the master bedroom.

60. This water infiltration resulted in two open cavities in the Ferreiras' master bedroom ceiling that have not been closed to date.

61. The Ferreiras again immediately notified Defendants in writing of the infiltration.

62. Defendants again stated they would fix the water infiltration, and shortly thereafter Procaccino expressly represented to the Ferreiras that the sole cause of the infiltration was repaired and that the problem had been isolated to the master bedroom. At no time did Defendants inform MILO that the water infiltration would continue or that its cause could not be repaired without significant remediation throughout many other areas of the Home.

63. At no time did Defendants inform MILO or the Ferreiras that the water infiltration was the result of significant construction defects or a failure to follow design specifications.

64. MILO relied on Defendants' express representations that Defendants had cured the cause of the infiltration.

65. In the spring of 2015, after the reoccurrence of the master bedroom leak, Procaccino, Elwood, and the Ferreiras all met at the Home to discuss the moisture infiltrations.

66. At that meeting, Procaccino and Elwood both expressly represented that the leaks in the Home were isolated incidents, and that Procaccino, Elwood and 200 CSP were committed to repairing those leaks.

67. Procaccino and Elwood knew or should have known that these statements were false.

68. At that meeting, Procaccino and Elwood failed to disclose that the water infiltration was a direct result of Defendants' failure to build the Home to code with an effective moisture-barrier.

69. Plaintiff and the Ferreiras relied on those representations and omissions.

70. In July of 2015, after returning from summer vacation and four months after the water infiltration had supposedly been completely remediated in both the master bedroom and the second-floor children's bedroom, the Ferreiras discovered a second mushroom fungus growing out of the wall of their child's bedroom. (See Exhibit "D", July 2015 Photograph of Mold Mushroom.)

71. This fungus posed a danger to the health of the Ferreiras' young children.

72. In fact, from the moment that mushroom was discovered, the Ferreiras' children never slept in that room again.

73. The Ferreiras were distraught at the presence of a large mushroom in their children's bedroom growing in the exact same place as the previous mushroom had appeared.

74. The Ferreiras immediately contacted Defendants regarding the mushroom and the on-going water infiltration.

75. Again, Defendants purported to inspect the Home, represented that the water infiltration was the result of a limited issue with a bedroom window, and purported to "repair" the issue.

76. Procaccino and Elwood individually represented to Beth Ferreira that the entire window – including the sash – would be replaced to ensure that the mushroom would not reoccur.

77. Even this limited representation of the fraudulent repair was false, as Defendants did not replace the sash and instead chose to replace only the glass windows (which were under warranty by the manufacturer, thereby avoiding any direct costs to themselves) and did not in any way address the window sash, frame or adjacent wall behind which the water had collected.

78. In fact, shortly after Procaccino represented to Beth Ferreira that the sash would be replaced, she overheard him telling a contractor for 200 CSP that they ***would not be replacing the sash at all.***

79. Accordingly, at the time this representation was made, Procaccino and Elwood knew that it was false.

80. Throughout 2015, Ferreiras repeatedly asked the Defendants to provide a plan of action, full scope of work for the remediation process and a timeline in which the work would be completed.

81. At no time did the Defendants ever furnish a plan, scope of work or timeline to the Ferreiras with regards to the multiple issues now identified throughout the Home.

82. At no time after the second mushroom appeared did Defendants inform the Ferreiras or MILO that the building envelope was thoroughly compromised or that the “repair” they effected could not stop the continued water infiltration into the Home.

83. Instead, Defendants – including Procaccino and Elwood individually – continued to fraudulently lull the Ferreiras into believing the limited repairs had completely remediated the water infiltration problem which had caused the growth of multiple fungi inside the Home.

84. In or about July 2015, the Ferreiras hired an independent home inspector to conduct a moisture infiltration assessment of the Home.



85. In addition, the Ferreiras hired a mold inspector to monitor the presence of mold in the Home.

86. The Home was inspected and tested for mold on multiple occasions between March 2015 (after the discovery of the first fungal mushroom growth) and November 2015.

87. In November the mold inspector discovered the presence of mold in the Home, giving the Ferreiras no choice but to evacuate the Home.

88. The Ferreiras then sought further opinions by hiring a forensic water penetration and microbial growth expert to conduct a review of the home.

89. The result of these inspections was devastating: the Home was rife with construction defects that were causing structural damage and massive water infiltration.

90. The water infiltration was so extensive that when an exterior brick wall was punctured at the second floor level as part of the inspection, water was retained so high in the wall cavity that it shot out onto the street.

91. Despite Defendants' representations that the causes of the water infiltration throughout the home had been repaired, it was now clear that significant additional water infiltration had occurred throughout other parts of the Home, causing internal damage that was not immediately apparent to MILO or the Ferreiras at the time all previous issues mentioned above, had surfaced.

92. Such water infiltration issues are currently on-going, have never been adequately repaired, and are causing ongoing damage to the Home.

93. In fact, on or about September 10, 2015 water infiltration re-occurred in the master bedroom, months after Defendants had assured Plaintiff and the Ferreiras that the leaks in the master bedroom had been fully repaired.

94. Not only had Defendants assured Plaintiff and the Ferreiras that the master bedroom water infiltration had been repaired, Defendants pressured the Ferreiras to seal the cavity that had been opened to “repair” the water infiltration, despite that Defendants knew the root cause of the water infiltration was not repaired.

95. Defendants’ multiple representations about the appropriate “fix” purposefully lulled MILO and the Ferreiras into believing that the necessary repairs had been made.

96. The independent inspection further revealed the Home was *not* built according to industry standards, nor even the minimal requirements of the International Residential Code (“IRC”).

97. Further, the Home was not built according to the design of the architectural drawings advertised on Defendants’ website, nor the actual architectural drawings used to obtain the building permits from the City of Philadelphia.

98. Pursuant to the Uniform Construction Code of Pennsylvania, Pennsylvania expressly incorporates the provisions of the International Residential Code. (*See DRB, Inc. v. Pennsylvania Dep’t of Labor & Indus.*, 853 A.2d 8, 11 (Pa. Commw. Ct. 2004) *aff’d*, 585 Pa. 8, 887 A.2d 1216 (2005) *stating that* “the Department and incorporated by reference various model codes, including the International Residential Code . . . [which] applies to the ‘construction, alteration, repair, movement, equipment, removal, demolition, location, maintenance, occupancy or change of occupancy of every building or structure which occurs after April 9, 2004.’”) )

99. The Northeast Inspection Report conclusively found the Home as built failed to comply with any iteration of the IRC or industry standard.



100. During the latter part of 2015 and through the summer of 2016, the Ferreiras were displaced from the Home, and forced to live in a temporary apartment with only some of the costs borne by Defendants.

101. Throughout this time Defendants continued to falsely represent they could and would remediate the defects in the Home, but continued to thoroughly obscure and misrepresent the enormity of the defects.

102. The Defendants directly refused to remediate damage caused to structural beams, plywood and other structural materials that had been exposed to water for years as a result of the numerous construction defects throughout the Home.

103. Finally, Elwood expressly stated to David Ferreira that he and Procaccino were “not putting any more money into the property.”

104. This admission revealed that despite Elwood and Procaccino’s representations that they would “make it right,” such representations were false.

105. This admission also revealed that, while 200 CSP was ostensibly the seller of the Home, Elwood and Procaccino exercised complete dominion and control over 200 CSP, such that they – and only they – could determine whether 200 CSP would remediate the extensive defects in the Home.

106. Upon information and belief, 200 CSP was specifically formed by Procaccino and Elwood for the purposes of constructing the Home, and other luxury homes on South 12<sup>th</sup> Street and elsewhere in Philadelphia.

107. Accordingly, 200 CSP was specifically formed with the intent to protect Procaccino and Elwood from personal liability for any claims arising from their construction of luxury homes in Philadelphia.

108. Procaccino and Elwood understood that 200 CSP was engaging in the business of constructing multi-million dollar homes in an expensive and highly desirable neighborhood in Philadelphia, and as such, Procaccino and Elwood understood that 200 CSP had to be properly capitalized to engage in the construction of such luxury homes.

109. At a minimum, 200 CSP was required to have sufficient capital to not only build the luxury homes, but also to be able to fund the complete remediation of each home in the event that any of the homes were defectively constructed.

110. As a result of the sale of the Home, and the other homes on the block, 200 CSP made substantial profits.

111. Those substantial profits should have been retained as capital by 200 CSP to meet its foreseeable repair and remediation obligations.

112. Upon information and belief, those profits were stripped out of 200 CSP by Procaccino and Elwood.

113. Upon information and belief, Procaccino and Elwood took those profits for their personal enrichment knowing 200 CSP would be financially incapable of meeting its repair and remediation obligations.

114. Upon information and belief, at no time did 200 CSP have any independent or professional management or overseers to act as a check on the abuses caused by the fraudulent conduct of Procaccino or Elwood.

115. Accordingly, Procaccino and Elwood engaged in a scheme to protect themselves from any liability arising from the defective construction of the Home, while simultaneously siphoning all of the profits and capital earned by 200 CSP from the sale of the Home, and other luxury homes like it.

116. As a direct result of Procaccino and Elwood's conduct, 200 CSP is grossly undercapitalized.

117. In refusing to accept the multiple attempts by the Ferreiras to remediate these defects and the damage they have caused, the Defendants abdicated their responsibility to mitigate the damages to MILO and the Ferreiras and left them with no other course of action than to seek protection from this court.

118. In order to determine the full extent of the defects in the home, MILO, by and through the Ferreiras, was forced to retain Rimkus Consulting to assess the structural and architectural integrity of the Home.

119. On September 12, 2016, Rimkus Consulting produced a summary report (the "Rimkus Report") of the construction defects in the Home which identified significant life-safety issues as well as code non-compliance. (*See* Exhibit E, September 12, 2016 Rimkus Report.)

120. These defects were not limited to the water infiltration and building envelope failures, but included structural defects and life-safety risks.

121. Among the most flagrant construction defects noted in the Rimkus Report are the following:

- a. A foundation wall below grade and not to code;
- b. Insufficient wall cavity thickness in the brick veneer due to concrete 'back-filling';
- c. Improper support of the fourth-floor brick veneer on a water-soaked, delaminating and structurally weak Parallam beam;
- d. Deficient brick veneer ties that fail to adequately secure the brick veneer; and
- e. Lack of relief angles for the upper portions of the brick veneer to ensure that the brick veneer does not collapse on itself.

122. These risks are and will continue to be life-threatening to any inhabitants of the Home, until completely remediated.

123. As an example only, the combination of the deficient brick veneer ties and the lack of relief angles makes it a near-certainty that the brick veneer will crack and collapse.

124. This imminent collapse is exacerbated by the fact that water is building up in the insufficient wall cavity.

125. This will lead to ice that will expand behind the wall, weaken the already insufficiently secured brick veneer, and ultimately almost certainly cause a collapse onto the public street.

126. Similarly, the lack of a code-compliant foundation renders the Home structurally unstable.

127. The mold and water infiltration of the Parallam beam has led to progressive deterioration of that beam.

128. As a result, that beam has “already experienced a structural strength reduction from its design capacity” and requires immediate remediation. (The Parallam beam supports the fourth-floor brick wall, and supports the ceiling in the Ferreiras’ master bedroom.) (See Exhibit E.)

129. In addition, a comparison of the architectural drawings and the finished Home demonstrates that the Home was not constructed in compliance with those architectural drawings.

**C. Defendants’ Pattern and Practice of Construction of Defective and Faulty Homes.**

130. The Ferreiras have learned that some of their neighbors have experienced similar water infiltration problems with their homes, which were constructed on the 500 block of S. 12<sup>th</sup> Street by the Defendants.

131. Many of the homeowners have experienced the same misleading “solutions” and easy “fixes” performed by Defendants on the Home.

132. Further, upon information and belief, some of the same Homes are afflicted with the same structural and architectural defects.

133. Defendants have thus acted in a concertedly deceptive fashion over an extended period of time affecting an extensive number of purchasers of residential homes.

**D. Defendants’ Knowledge of the Defects in the Home.**

134. Defendants allegedly constructed the Home in accordance with and pursuant to specified plans and architectural drawings which, among other things, were submitted to the City of Philadelphia in order to secure a building permit.

135. A review of those plans, however, shows the Home was not constructed in accordance with the architect’s designs, and that neither the City of Philadelphia, nor Plaintiff were ever so advised.

136. In so doing, Defendants – by and through Procaccino and Elwood individually – engaged in significant, but non-apparent, fraudulent cost-cutting measures that resulted in the construction defects in the Home.

137. By way of limited example, Defendants installed the brick wall without appropriate relief angles.

138. Such an installation resulted in significantly less construction time, saving Defendants’ labor and material costs.

139. No lay person would know of such cost-cutting measures.

140. As a result of Defendants' cost-cutting measures, the brick wall is now in danger of collapse.

141. Similarly, the brick wall was installed without the weep screeds necessary to drain any water that infiltrated the brick wall.

142. Weep screeds are required by the IRC code and are necessary to ensure that water is directed out of any walls it may seep into.

143. Defendants' failure to appropriately install weep screeds rendered the Home vulnerable to the exact damages it sustained, including water infiltration, rotted sheathing, extensive mold growth and the retention of water – under pressure – up to the second floor level.

144. Again, no lay person would know of this construction short-cut.

145. Defendants knew or should have known that the defective installation and attachment of the brick veneer and the failure to install weep screeds would allow water penetration into the construction and cause interior damage to the Home.

146. In addition, Defendants failed to disclose such defects to MILO, despite a duty to make such disclosures at the time of the sale of the Home. (*See* Ex. A at §10(E), Agreement of Sale.)

147. Among other things, MILO relied on the absence of any such disclosures in purchasing the Home.

148. As a direct and proximate result of Defendants' conduct, the Ferreiras were forced to reside in a temporary apartment for almost a year, and have now sought permanent residence outside the City of Philadelphia.

149. Defendants' conduct has significantly diminished the resale value of the Home, as the existence of these defects must be disclosed whenever MILO attempts to re-sell the Home,



regardless of what ultimate repairs may achieve, if such repairs are even possible given the extent of the issues set out above.

150. As such, MILO is unable to sell the Home at any reasonable price as a result of the significant construction defects currently extant.

151. Plaintiff has attempted serious negotiation/mediation with Defendants and such efforts have been met with deceit, stonewalling and obfuscation, thus making any further negotiation or mediation futile.

152. Rather than proceeding individually, Procaccino and Elwood instead chose to utilize the limited liability company form of 200 CSP to sell the Home and others like it.

153. Despite that, Procaccino and Elwood retained sole control over 200 CSP, and made all decisions regarding the construction of the Home, the hiring of sub-contractors, and the subsequent remediation effort and lack thereof.

154. Upon information and belief, Procaccino and Elwood caused 200 CSP to not engage proper professionals and oversight resources, despite 200 CSP's obligation to do so.

155. Upon information and belief, Procaccino and Elwood caused 200 CSP to engage unqualified or underqualified sub-contractors to complete the construction, despite knowing such sub-contractors were unable or unwilling to build the Home competently and to code given the amount paid to them by Procaccino and Elwood.

156. As set forth herein, Procaccino and Elwood routinely and regularly represented that the Home was a luxury construction, and any water-infiltration was minor and isolated.

157. Procaccino and Elwood knew or should have known that these statements were untrue.

158. Such statements were made with the intent that Plaintiff and Ferreiras would rely on those statements, trust that the remediation plans devised by Procaccino and Elwood were sufficient, and ultimately accept such “remediation” without further investigation of the widespread defects in the Home.

159. Plaintiff and the Ferreiras did reasonably rely on these representations and have directly suffered damages as a result, as more fully described elsewhere in this Complaint.

160. Accordingly, Procaccino and Elwood utilized the artificial nature of 200 CSP to perpetuate a fraud.

161. Defendants’ actions were outrageous in that they were committed wrongfully, knowingly, oppressively, intentionally, with an evil motive, actual malice, wanton and reckless disregard for the law, gross negligence and/or reckless indifference to the rights of MILO over an extended period of time.

162. Further, Defendants’ attempts to cover up and conceal the defects, and their conduct of lulling Milo and the Ferreiras into believing that the repairs completely remediated the water infiltration problems, was intentionally deceitful, outrageous, wanton, and reckless, and demonstrates that any further attempt at mediation would be futile.

**COUNT I**  
**(VIOLATION OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND**  
**CONSUMER PROTECTION PURSUANT TO 73 PS § 201-3, et seq.)**  
**PLAINTIFF v. DEFENDANTS**

163. Plaintiff hereby incorporates all other paragraphs contained in this pleading as though fully set forth herein.



164. The Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) was designed to promote full disclosure of information to consumers and to equalize market position and strength of the consumer vis-a vis the seller.

165. In that regard the UTPCPL requires an expansive reading which reaches unfair and deceptive practices in all consumer transactions.

166. The UTPCPL has frequently been applied in contracts for the sale of real estate. *See, e.g., Anderson v. Kessler*, 42 Pa. D & C.3d 79 (Ct Comm Pl., 1984); *Skurnowicz v. Lucci*, 2002 WL 922579 (Pa. Super. 2002); *Metz v. Quaker Highlands, Inc.*, 714 A.2d 447 (Pa. Super. 1998).

167. Defendants are persons as defined pursuant to 73 Pa. C.S.A. §201-2 and engaged in trade or commerce as defined pursuant to 73 P.S. §201-2 .

168. MILO purchased the Home from Defendants solely for the personal use of Ferreiras.

169. MILO purchased “goods” which fall under the UTPCPL.

170. The foregoing misrepresentations constitute deceptive acts and unfair trade practices as defined pursuant to 73 P.S. § 201-2 in direct violation of the Unfair Trade Practices and Consumer Protection Act.

171. Specifically, Defendants misrepresented that Defendants’ “goods” were of a particular character, knowing they were not. *See* 73 P.S. § 201-2(4)(v).

172. Defendants misrepresented to MILO that Defendants’ “goods” were of a particular standard, quality or grade, knowing they were not. *See* 73 P.S. § 201-2(4)(vii).

173. Defendants' representations as to the particular character standard, quality and grade of their goods and services constituted a material misrepresentation as the Home actually provided to Plaintiff contained multiple defects which were concealed by Defendants.

174. In addition, Defendants' misconduct and misrepresentations constitutes "fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding" in violation of the UTPCPL. *See* 73 P.S. § 201-2(4)(xxi).

175. MILO justifiably relied on Defendants' misrepresentations when they purchased the Home.

176. MILO and the Ferreiras first discovered the fraudulent and deceptive conduct of Defendants well after closing on the Agreement and moving into the Home.

177. Indeed, the full scope of Defendants' deception was not known until January 2016, when Plaintiff engaged experts to examine and inspect the Home.

178. As a direct and proximate result of Defendants misrepresentations, MILO sustained and will continue to sustain significant damages as described above.

179. As a direct and proximate result of Defendants' misconduct, MILO is also entitled to treble damages, attorneys' fees, and cost of suit.

**WHEREFORE**, MILO demands judgment in their favor and against Defendants 200 Christian Street Partners, Virgil Procaccino and Arthur Elwood jointly and severally, and requests that the Court enter an order:

- a. Awarding MILO actual damages and treble damages, including compensatory, punitive and/or consequential damages, in an amount to be determined at trial;
- b. awarding MILO pre- and post-judgment interest in an amount to be determined at trial; and
- c. awarding MILO such other and further relief as the Court may deem equitable, just and proper, including the award of costs, expenses, reasonable attorneys' fees, reasonable inspection fees, relocation costs, and damages for the diminution

of value of the Home incurred by MILO in this action.

**COUNT II**  
**(BREACH OF CONTRACT)**  
**PLAINTIFF v. DEFENDANTS**

180. MILO hereby incorporates all other paragraphs contained in this pleading as though fully set forth herein.

181. Pursuant to the Agreement of Sale, Defendants were obligated to comply with Real Estate Seller Disclosure Law.

182. The Agreement expressly states that a violation of the Real Estate Seller Disclosure Law allowed MILO “to pursue any remedies that may be available under law or equity.” (Ex. A at §28, Agreement of Sale.)

183. The Real Estate Seller Disclosure Law requires that “[a]ny seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller . . . .” 68 Pa. C.S.A. § 7303.

184. Material defects are defined as “a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. 68 Pa C.S.A. § 7102.

185. As set forth more fully above, the Home was rife with defects that have had, and will continue to have, a significant adverse impact on the value of the property, and that involve an unreasonable risk to people on the property.

186. Defendants knew of these material defects in the Home prior to the sale of the Home and failed to disclose such defects the MILO or the Ferreiras in any manner.

187. Defendants have breached the Agreement of Sale by their failure to comply with the Real Estate Seller Disclosure Law.

188. As a direct and proximate result of that breach, MILO has been damaged.

**WHEREFORE**, MILO demands judgment in their favor and against Defendants 200 Christian Street Partners, Virgil Procaccino and Arthur Elwood jointly and severally, and requests that the Court enter an order:

- a. Awarding MILO actual damages and punitive damages, including compensatory, punitive and/or consequential damages, in an amount to be determined at trial;
- b. awarding MILO pre- and post-judgment interest in an amount to be determined at trial; and
- c. awarding MILO such other and further relief as the Court may deem equitable, just and proper, including the award of costs, expenses, reasonable attorneys' fees, reasonable inspection fees, relocation costs, and damages for the diminution of value of the Home incurred by MILO in this action.

**COUNT III  
(BREACH OF IMPLIED WARRANTY)  
PLAINTIFF v. DEFENDANTS**

189. MILO hereby incorporates the all other paragraphs contained in this pleading as though fully set forth herein.

190. Defendants impliedly warranted that the Home was:

- i. Safe and fit for human habitation;
- ii. Free from construction defects and faulty materials;
- iii. Constructed in a workmanlike manner;
- iv. Constructed according to sound building and engineering standards;
- v. Constructed in accordance with all applicable building codes; and
- vi. Constructed in accordance with the displayed architectural drawings.

191. In addition, through the actions of each and every agent, representative and independent contractors for Defendants, Defendants impliedly and expressly warranted that all defects complained of would be properly and competently repaired.

192. At all times material, Plaintiff relied on Defendants' representations and warranties.

193. As set forth more fully above, each of these implied warranties were breached:

- i. The Home was not safe and fit for human habitation, as evidenced by the continuous water penetration and mold growth;
- ii. The Home was not free from construction defects and faulty materials;
- iii. The Home was not constructed in a workmanlike manner;
- iv. The Home was not constructed according to sound building and engineering standards;
- v. The Home was not constructed in accordance with applicable building codes;
- vi. The Home was not built according to the architectural drawings; and
- vii. Despite the implied warranties and representations made by agents, representatives and independent contractors, none of the repairs were properly and competently completed, and instead failed entirely to repair and remediate the damage to the Home. Such "repairs" only served to lull MILO into believing the home had been fixed.

194. Such damages include the cost to repair, remediate, and restore the Home to the condition it should have been delivered in.

195. In addition, such damages include the diminution of value to the Home.

**WHEREFORE**, MILO demands judgment in their favor and against Defendants 200 Christian Street Partners, Virgil Procaccino and Arthur Elwood jointly and severally, and requests that the Court enter an order:

- a. Awarding MILO actual damages and punitive damages, including compensatory, punitive and/or consequential damages, in an amount to be determined at trial;
- b. awarding MILO pre- and post-judgment interest in an amount to be determined at trial; and
- c. awarding MILO such other and further relief as the Court may deem equitable,



just and proper, including the award of costs, expenses, reasonable attorneys' fees, reasonable inspection fees, relocation costs, and damages for the diminution of value of the Home incurred by MILO in this action.

**COUNT IV  
(NEGLIGENCE)  
PLAINTIFF v. DEFENDANTS**

196. Plaintiff hereby incorporates all other paragraphs contained in this pleading as though fully set forth herein

197. Defendants owed MILO a duty of care to ensure that the construction of the Home was completed in such a way that conformed to applicable building codes and the architectural drawings, and did not present a danger to the Ferreiras.

198. Defendants breached that duty in the manner in which they constructed the Home.

199. As a direct and proximate result of those breaches, MILO has been damaged.

**WHEREFORE**, MILO demands judgment in their favor and against Defendants 200 Christian Street Partners, Virgil Procaccino and Arthur Elwood jointly and severally, and requests that the Court enter an order:

- a. Awarding MILO actual damages and punitive damages, including compensatory, punitive and/or consequential damages, in an amount to be determined at trial;
- b. awarding MILO pre- and post-judgment interest in an amount to be determined at trial; and
- c. awarding MILO such other and further relief as the Court may deem equitable, just and proper, including the award of costs, expenses, reasonable attorneys' fees, reasonable inspection fees, relocation costs, and damages for the diminution of value of the Home incurred by MILO in this action.

**COUNT V**  
**(NEGLIGENT SUPERVISION)**  
**PLAINTIFF v. DEFENDANTS**

200. Plaintiff hereby incorporates by reference all other paragraphs as if set forth fully at length herein.

201. Defendants had a duty to exercise reasonable care in the selection, hiring, retention, and supervising of its employees and subcontractors.

202. Defendants and its owners and officers breached their duty to exercise reasonable care in the hiring and supervision of its employees when it failed to properly train and supervise competent employees, agents, representatives, sub-contractors and independent contractors in the construction of Home.

203. Such failures led to the construction of the Home with significant and substantial defects, use of faulty materials, and failure to construct the Home to industry standard and according to the applicable building codes.

204. As a direct and proximate result of Defendants' negligent conduct, MILO sustained the damages described herein.

**WHEREFORE**, MILO demands judgment in their favor and against Defendants 200 Christian Street Partners, Virgil Procaccino and Arthur Elwood jointly and severally, and requests that the Court enter an order:

- a. Awarding MILO actual damages and punitive damages, including compensatory, punitive and/or consequential damages, in an amount to be determined at trial;
- b. awarding MILO pre- and post-judgment interest in an amount to be determined at trial; and
- c. awarding MILO such other and further relief as the Court may deem equitable, just and proper, including the award of costs, expenses, reasonable attorneys' fees, reasonable inspection fees, relocation costs, and damages for the diminution of value of the Home incurred by MILO in this action.

**COUNT VI  
(CIVIL CONSPIRACY)  
PLAINTIFF v. DEFENDANTS**

205. MILO hereby incorporates by reference all other paragraphs as though set forth fully at length herein.

206. Defendants, amongst themselves, conspired and agreed to fraudulently represent to MILO, as well as multiple other homeowners not party to this suit, that they would design and construct homes without major defects or faults, in accordance with industry standards, according to the applicable building codes and according to the architectural drawings.

207. The Defendants entered into this agreement in furtherance of this conspiracy, to avoid their obligations as set forth in the UTPCPL and to breach their obligations under both express and implied warranties, in an effort to maximize profits, avoid required costs and otherwise enrich themselves at the expense of damage to MILO and their Home and personal property.

208. The Defendants took multiple overt acts to accomplish these purposes, including, but not limited to the use improper construction practices, as well as a concerted campaign to misrepresent the extent of the defects to the homes and to misrepresent the nature of the futile “repairs” and “remediation” to the Home.

209. As a result of these unlawful acts, MILO has been damaged as set forth herein.

**WHEREFORE**, MILO demands judgment in their favor and against Defendants 200 Christian Street Partners, Virgil Procaccino and Arthur Elwood jointly and severally, and requests that the Court enter an order:

- a. Awarding MILO actual damages and punitive damages, including compensatory, punitive and/or consequential damages, in an amount to be determined at trial;
- b. awarding MILO pre- and post-judgment interest in an amount to be determined at trial; and



- c. awarding MILO such other and further relief as the Court may deem equitable, just and proper, including the award of costs, expenses, reasonable attorneys' fees, reasonable inspection fees, relocation costs, and damages for the diminution of value of the Home incurred by MILO in this action.

**COUNT VII**  
**(VIOLATION OF PENNSYLVANIA REAL ESTATE SELLER DISCLOSURE LAW)**  
**PLAINTIFF v. DEFENDANTS**

210. MILO hereby incorporates by reference all other paragraphs as though set forth fully at length herein.

211. The Real Estate Seller Disclosure Law requires that “[a]ny seller who intends to transfer any interest in real property shall disclose to the buyer any material defects with the property known to the seller . . . .” 68 Pa. C.S.A. § 7303.

212. Any person “who willfully or negligently violates or fails to perform any duty prescribed by any provision of this chapter shall be liable in the amount of actual damages suffered by the buyer as a result of a violation of this chapter.” 68 Pa. C.S.A. § 7311.

213. As set forth more fully above, the Home was rife with defects that have had, and will continue to have, a significant adverse impact on the value of the property and that involve an unreasonable risk to people on the property.

214. Further, as set forth more fully above, Defendants failed to disclose such material defects.

215. Accordingly, Defendants have violated the Real Estate Seller Disclosure Law.

216. As a result of Defendants’ violation of the Real Estate Seller Disclosure Law, Plaintiff has suffered actual damages, including diminution of the value of the Home.

**WHEREFORE**, MILO demands judgment in their favor and against Defendants 200 Christian Street Partners, Virgil Procaccino and Arthur Elwood jointly and severally, and requests that the Court enter an order:

- a. Awarding MILO actual damages and punitive damages, including compensatory, punitive and/or consequential damages, in an amount to be determined at trial;
- b. awarding MILO pre- and post-judgment interest in an amount to be determined at trial; and
- c. awarding MILO such other and further relief as the Court may deem equitable, just and proper, including the award of costs, expenses, reasonable attorneys' fees, reasonable inspection fees, relocation costs, and damages for the diminution of value of the Home incurred by MILO in this action.

**DEMAND FOR TRIAL BY JURY**

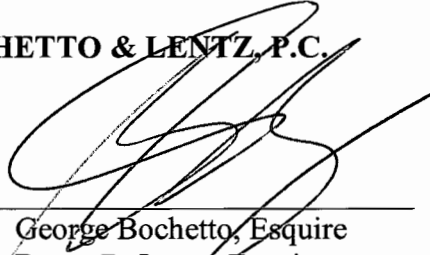
Plaintiff demands a trial by a jury of twelve (12) on all claims triable thereby.

Respectfully Submitted,

**BOCHETTO & LENTZ, P.C.**

Date: January 30, 2017

By: \_\_\_\_\_

  
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## **Exhibit “A”**



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Collections • Homes

## Center City residential developers build on the 'wow' factor



Arthur "Art" Elwood Jr., cofounder of Christian Street Partners, at his latest project, at 12th and Lombard. (ANDREW THAYER / Staff Photographer)

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### The END Of The Ellen Show!

Leaked secret may bring down Ellen's empire! - Her fans **OUTRAGED**. See the secret she hid so well from the world...

[FIRST LOOK]



By Erin Arvedlund, Inquirer Staff Writer

POSTED: August 18, 2014

Arthur "Art" Elwood Jr., cofounder of Christian Street Partners with Virgil Procaccino, is an accountant-turned-real estate developer.

He and Procaccino have just completed their latest residential project, 501-507 S. 12th St. at Lombard in Center City, former site of the Pain Center, a medical office. After the property's owner was arrested for insurance fraud, Christian Street Partners bought the corner lot and developed it into six homes priced at \$1.675 million to \$2 million each.

"It took us a year to get this project going," Elwood said.

The old Pain Center sign is now "hanging in the bar down the block," he said, laughing. "It's very appropriate there."

The developers retained the Philadelphia-based firm Harman Deutsch as architect, and in place of the Brutalist-style two-story brick office structure now stand sleek single-family homes of 5,200 square feet, with two decks and two-car parking facing west on the side street.

A recent tour of one of the homes revealed a living room with large, wraparound picture windows and a gas fireplace, and a kitchen featuring modern Poggenpohl cabinetry with some sliding-door features.

Each house has an elevator and a trademark design that includes skylights, blond-wood floors, and wooden railings on the staircases.

The \$10 million project was financed by Bryn Mawr Trust and is the latest in a string of Center City East developments in the booming neighborhood.

Christian Street Partners' first development was a 13-unit condominium project built in 2001 on the 200 block of Christian Street (hence the company's name). Others followed, at 741-59 S. Second St., 1537 Pine St., 22d Street between Locust and Spruce, and 21st Street between Lombard and Pine.

Procaccino was once an accounting client of Elwood's, and they became business partners. They have the same philosophy of working as general contractor and developer, buying the materials themselves and saving that money to put back into the business.

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"Our subcontractors like that also, because they don't have to carry inventory and all they have to worry about is payroll," Elwood said.

Christian Street Partners is a family operation, too: Two of Elwood's three sons - oldest son Garrett and youngest son Hunter - have worked as accountant/bookkeeper and construction-management coordinator in recent years. John Duffy Jr., Procaccino's son-in-law, is their real estate agent. (John Krause of Century 21 Alliance also represents the 12th and Lombard property.)

For future projects, Elwood said, "we're looking in the Art Museum area and south of that area."

Christian Street Partners tries to differentiate itself.

"It's not a big field [of developers] in the \$1 million-plus market," he said. "Our first four buyers looked at other developments and chose ours; maybe we are lucky because our neighborhoods are better. I do the closings, and all of our buyers said the designs were similar to other developers - two-car parking in the rear, for example. But we put the living space and kitchen on the second floor, with a rear deck as the outdoor space."

Almost all similar projects are more than 4,000 square feet and start in the \$1 million-to-\$1.5 million range, Elwood said. "But our buyers come in, and it's the 'wow' factor. For example, we add an extra six to eight inches in ceiling height. We don't skimp on that."

The million-dollar market for condominiums is alive and well in Philadelphia, as recent property transactions demonstrate. Interest rates are still low, and the city's tax abatement continues to bring in new residents from the suburbs.

A \$1 million, 30-year mortgage can be had at 3.5 percent, Elwood said, with the remainder of the purchase price in cash.

"That is huge in driving the \$1 million-plus market," he said. "It is a very hot market here."

In some cases, for jumbo mortgages (in the Philadelphia region, those greater than \$417,000), "the banks are holding the mortgages themselves, which speeds approval," Elwood said. "And it takes as much work for the bank to do a \$1 million mortgage as it does a \$250,000 mortgage."

earvedlund@phillynews.com

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## **Exhibit “B”**



## STANDARD AGREEMENT FOR THE SALE OF REAL ESTATE

ASR

This form recommended and approved for, but not restricted to use by, the members of the Pennsylvania Association of Realtors® (PAR).

PARTIES	
BUYER(S): <u>David Ferreira or assignee</u>	SELLER(S): <u>200 Christian Street Partners</u>
BUYER'S MAILING ADDRESS:	SELLER'S MAILING ADDRESS:

PROPERTY	
ADDRESS (including postal city) <u>501 A S 12th Street</u>	
ZIP <u>19147</u>	
In the municipality of <u>Philadelphia</u>	County of <u>Philadelphia</u>
In the School District of <u>Philadelphia</u>	In the Commonwealth of Pennsylvania
Tax ID #(s): <u>tbd</u>	and/or
Identification (e.g., Parcel #; Lot, Block; Deed Book, Page, Recording Date):	

BUYER'S RELATIONSHIP WITH PA LICENSED BROKER	
<input type="checkbox"/> No Business Relationship (Buyer is not represented by a broker)	
Broker (Company) <u>Coldwell Banker Preferred</u>	Licensee(s) (Name) <u>Joe Herzog</u>
Company Address <u>223 Market Street, Philadelphia, PA 19106</u>	Direct Phone(s) <u>(267) 238-3508</u>
Company Phone <u>(215) 923-7600</u>	Cell Phone(s) <u>(215) 990-1956</u>
Company Fax	Fax <u>(215) 558-1295</u>
Broker is (check only one):	Email <u>jherzog@cbpref.com</u>
<input checked="" type="checkbox"/> Buyer Agent (Broker represents Buyer only)	Licensee(s) is (check only one):
<input type="checkbox"/> Dual Agent (See Dual and/or Designated Agent box below)	<input checked="" type="checkbox"/> Buyer Agent
	<input type="checkbox"/> Buyer Agent with Designated Agency
	<input type="checkbox"/> Dual Agent (See Dual and/or Designated Agent box below)
<input type="checkbox"/> Transaction Licensee (Broker and Licensee(s) provide real estate services but do not represent Buyer)	

SELLER'S RELATIONSHIP WITH PA LICENSED BROKER	
<input type="checkbox"/> No Business Relationship (Seller is not represented by a broker)	
Broker (Company) <u>Long and Foster - Lafayette Hill</u>	Licensee(s) (Name) <u>John Krause</u>
Company Address <u>430 Germantown Pike Lafayette Hill PA 19444</u>	Direct Phone(s) <u>215 460 0576</u>
Company Phone <u>480-828-2700</u>	Cell Phone(s) <u>215-460-0576</u>
Company Fax	Fax <u>215-253-3075</u>
Broker is (check only one):	Email <u>john.krause@comcast.net</u>
<input checked="" type="checkbox"/> Seller Agent (Broker represents Seller only)	Licensee(s) is (check only one):
<input type="checkbox"/> Dual Agent (See Dual and/or Designated Agent box below)	<input checked="" type="checkbox"/> Seller Agent
	<input type="checkbox"/> Seller Agent with Designated Agency
	<input type="checkbox"/> Dual Agent (See Dual and/or Designated Agent box below)
<input type="checkbox"/> Transaction Licensee (Broker and Licensee(s) provide real estate services but do not represent Seller)	

DUAL AND/OR DESIGNATED AGENCY	
A Broker is a Dual Agent when a Broker represents both Buyer and Seller in the same transaction. A Licensee is a Dual Agent when a Licensee represents Buyer and Seller in the same transaction. All of Broker's licensees are also Dual Agents UNLESS there are separate Designated Agents for Buyer and Seller. If the same Licensee is designated for Buyer and Seller, the Licensee is a Dual Agent.	
By signing this Agreement, Buyer and Seller each acknowledge having been previously informed of, and consented to, dual agency, if applicable.	
Buyer Initials: <u>DF</u>	Seller Initials: <u>JK</u>



1. By this Agreement, dated November 11, 2014

2. Seller hereby agrees to sell and convey to Buyer, who agrees to purchase, the Identified Property.

## 3. PURCHASE PRICE AND DEPOSITS (4-14)

(A) Purchase Price \$1,955,000.00( One Million, Nine Hundred Fifty-Five Thousand

U.S. Dollars), to be paid by Buyer as follows:

1. Initial Deposit, within 2 days of Execution Date, if not included

with this Agreement:

\$ 10,000.002. Additional Deposit within 15 days of the Execution Date:\$ 40,000.00

3.

\$

Remaining balance will be paid at settlement.

(B) All funds paid by Buyer, including deposits, will be paid by check, cashier's check or wired funds. All funds paid by Buyer within 30 days of settlement, including funds paid at settlement, will be by cashier's check or wired funds, but not by personal check.

(C) Deposits, regardless of the form of payment, will be paid in U.S. Dollars to Broker for Seller (unless otherwise stated here:

who will retain deposits in an escrow account in conformity with all applicable laws and regulations until consummation or termination of this Agreement. Only real estate brokers are required to hold deposits in accordance with the rules and regulations of the State Real Estate Commission. Checks tendered as deposit monies may be held uncashed pending the execution of this Agreement.

## 3. SELLER ASSIST (If Applicable) (1-10)

Seller will pay \$ \_\_\_\_\_ or 0.000 % of Purchase Price (0 if not specified) toward

Buyer's costs, as permitted by the mortgage lender, if any. Seller is only obligated to pay up to the amount or percentage which is approved by mortgage lender.

## 4. SETTLEMENT AND POSSESSION (4-14)

(A) Settlement Date is December 15, 2014, or before if Buyer and Seller agree.

(B) Settlement will occur in the county where the Property is located or in an adjacent county, during normal business hours, unless Buyer and Seller agree otherwise.

(C) At time of settlement, the following will be pro-rated on a daily basis between Buyer and Seller, reimbursing where applicable: current taxes; rent; interest on mortgage assumptions; condominium fees and homeowner association fees; water and/or sewer fees, together with any other lienable municipal service fees. All charges will be pro-rated for the period(s) covered. Seller will pay up to and including the date of settlement and Buyer will pay for all days following settlement, unless otherwise stated here:

(D) For purposes of prorating real estate taxes, the "periods covered" are as follows:

1. Municipal tax bills for all counties and municipalities in Pennsylvania are for the period from January 1 to December 31.

2. School tax bills for the Philadelphia, Pittsburgh and Scranton School Districts are for the period from January 1 to December 31.

School tax bills for all other school districts are for the period from July 1 to June 30.

(E) Conveyance from Seller will be by fee simple deed of special warranty unless otherwise stated here:

(F) Payment of transfer taxes will be divided equally between Buyer and Seller unless otherwise stated here:

(G) Possession is to be delivered by deed, existing keys and physical possession to a vacant Property free of debris, with all structures broom-clean, at day and time of settlement, unless Seller, before signing this Agreement, has identified in writing that the Property is subject to a lease.

(H) If Seller has identified in writing that the Property is subject to a lease, possession is to be delivered by deed, existing keys and assignment of existing leases for the Property, together with security deposits and interest, if any, at day and time of settlement. Seller will not enter into any new leases, nor extend existing leases, for the Property without the written consent of Buyer. Buyer will acknowledge existing lease(s) by initialing the lease(s) at the execution of this Agreement, unless otherwise stated in this Agreement.

☐ Tenant-Occupied Property Addendum (PAR Form TOP) is attached and made part of this Agreement.

## 5. DATES/TIME IS OF THE ESSENCE (1-10)

(A) Written acceptance of all parties will be on or before: November 14, 2014

(B) The Settlement Date and all other dates and times identified for the performance of any obligations of this Agreement are of the essence and are binding.

(C) The Execution Date of this Agreement is the date when Buyer and Seller have indicated full acceptance of this Agreement by signing and/or initialing it. For purposes of this Agreement, the number of days will be counted from the Execution Date, excluding the day this Agreement was executed and including the last day of the time period. All changes to this Agreement should be initialed and dated.

(D) The Settlement Date is not extended by any other provision of this Agreement and may only be extended by mutual written agreement of the parties.

(E) Certain terms and time periods are pre-printed in this Agreement as a convenience to the Buyer and Seller. All pre-printed terms and time periods are negotiable and may be changed by striking out the pre-printed text and inserting different terms acceptable to all parties, except where restricted by law.

63 Buyer Initials: Ref

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Seller Initials: VP

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## 64 6. ZONING (4-14)

65 Failure of this Agreement to contain the zoning classification (except in cases where the property (and each parcel thereof, if subdividable) is zoned solely or primarily to permit single-family dwellings) will render this Agreement voidable at Buyer's option, and, if voided, any deposits tendered by the Buyer will be returned to the Buyer without any requirement for court action.

66 Zoning Classification, as set forth in the local zoning ordinance: \_\_\_\_\_

## 67 7. FIXTURES AND PERSONAL PROPERTY (4-14)

68 (A) INCLUDED in this sale, unless otherwise stated, are all existing items permanently installed in the Property, free of liens, and other items including plumbing; heating; radiator covers; lighting fixtures (including chandeliers and ceiling fans); pools, spas and hot tubs (including covers and cleaning equipment); electric animal fencing systems (excluding collars); garage door openers and transmitters; television antennas; mounting brackets and hardware for television and sound equipment; unpotted shrubbery, plantings and trees; smoke detectors and carbon monoxide detectors; sump pumps; storage sheds; fences; mailboxes; wall to wall carpeting; existing window screens, storm windows and screen/storm doors; window covering hardware (including rods and brackets), shades and blinds; awnings; built-in air conditioners; built-in appliances; the range/oven; any remaining heating and cooking fuels stored on the Property at the time of settlement; and, if owned, water treatment systems, propane tanks, satellite dishes and security systems. Also included: \_\_\_\_\_

69 (B) The following items are LEASED (not owned by Seller). Contact the provider/vendor for more information (e.g., water treatment systems, propane tanks, satellite dishes and security systems): \_\_\_\_\_

70 (C) EXCLUDED fixtures and items: \_\_\_\_\_

## 71 8. MORTGAGE CONTINGENCY (4-14)

72 ☒ WAIVED. This sale is NOT contingent on mortgage financing, although Buyer may obtain mortgage financing and/or the parties may include an appraisal contingency.

73 ☐ ELECTED.

74 (A) This sale is contingent upon Buyer obtaining mortgage financing according to the following terms:

First Mortgage on the Property	Second Mortgage on the Property
Loan Amount \$ _____	Loan Amount \$ _____
Minimum Term _____ years	Minimum Term _____ years
Type of mortgage _____	Type of mortgage _____
For conventional loans, the Loan-To-Value (LTV) ratio is not to exceed _____ %	For conventional loans, the Loan-To-Value (LTV) ratio is not to exceed _____ %
Mortgage lender _____	Mortgage lender _____
Interest rate _____ %; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to exceed a maximum interest rate of _____ %.	Interest rate _____ %; however, Buyer agrees to accept the interest rate as may be committed by the mortgage lender, not to exceed a maximum interest rate of _____ %.
Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed _____ % (0% if not specified) of the mortgage loan.	Discount points, loan origination, loan placement and other fees charged by the lender as a percentage of the mortgage loan (excluding any mortgage insurance premiums or VA funding fee) not to exceed _____ % (0% if not specified) of the mortgage loan.

## 75 (B) Mortgage Commitment Date

76 Upon receiving a mortgage commitment(s), Buyer will promptly deliver a copy of the commitment(s) to Seller.

77 (C) The Loan-To-Value ratio (LTV) is used by lenders as one tool to help assess their potential risk of a mortgage loan. A particular LTV may be necessary to qualify for certain loans, or buyers might be required to pay additional fees if the LTV exceeds a specific level. The appraised value of the Property is used by lenders to determine the maximum amount of a mortgage loan. The appraised value is determined by an independent appraiser, subject to the mortgage lender's underwriter review, and may be higher or lower than the Purchase Price and/or market price of the property.

78 (D) The interest rate(s) and fee(s) provisions in Paragraph 8(A) are satisfied if the mortgage lender(s) gives Buyer the right to guarantee the interest rate(s) and fee(s) at or below the maximum levels stated. If lender(s) gives Buyer the right to lock in the interest rate(s), Buyer will do so at least 15 days before Settlement Date. Buyer gives Seller the right, at Seller's sole option and as permitted by law and the mortgage lender(s), to contribute financially, without promise of reimbursement, to the Buyer and/or the mortgage lender(s) to make the above mortgage term(s) available to Buyer.

79 (E) Within \_\_\_\_\_ days (7 if not specified) from the Execution Date of this Agreement, Buyer will make a completed, written mortgage application (including payment for and ordering of appraisal and credit reports without delay, at the time required by lender(s)) for the mortgage terms and to the mortgage lender(s) identified in Paragraph 8(A), if any, otherwise to a responsible mortgage lender(s) of Buyer's choice. Broker for Buyer, if any, otherwise Broker for Seller, is authorized to communicate with the mortgage lender(s) to assist in the mortgage loan process.

80 (F) Buyer will be in default of this Agreement if Buyer furnishes false information to anyone concerning Buyer's financial and/or employment status, fails to cooperate in good faith with processing the mortgage loan application (including delay of the appraisal), fails to lock in interest rate(s) as stated in Paragraph 8(D), or otherwise causes the lender to reject, or refuse to approve or issue, a mortgage loan commitment.

125 Buyer Initials: BCF

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Seller Initials: VP



- (G) 1. If Seller does not receive a copy of the mortgage commitment(s) by the Mortgage Commitment Date, Seller may terminate this Agreement by written notice to Buyer. Seller's right to terminate continues until Buyer delivers a mortgage commitment to Seller.
2. Seller may terminate this Agreement by written notice to Buyer after the Mortgage Commitment Date if the mortgage commitment:
- Does not satisfy the terms of Paragraph 8(A), OR
  - Contains any condition not specified in this Agreement (e.g., Buyer must settle on another property, an appraisal must be received by the lender, or the mortgage commitment is not valid through the Settlement Date) that is not satisfied and/or removed in writing by the mortgage lender(s) within 7 DAYS after the Mortgage Commitment Date in Paragraph 8(B), or any extension thereof, other than those conditions that are customarily satisfied at or near settlement (e.g., obtaining insurance, confirming employment).
3. If this Agreement is terminated pursuant to Paragraphs 8(G)(1) or (2), or the mortgage loan(s) is not obtained for settlement, all deposit monies will be returned to Buyer according to the terms of Paragraph 26 and this Agreement will be VOID. Buyer will be responsible for any costs incurred by Buyer for any inspections or certifications obtained according to the terms of this Agreement, and any costs incurred by Buyer for (1) Title search, title insurance and/or mechanics' lien insurance, or any fee for cancellation; (2) Flood insurance, fire insurance, hazard insurance, mine subsidence insurance, or any fee for cancellation; (3) Appraisal fees and charges paid in advance to mortgage lender(s).
- (H) If the mortgage lender(s), or a property and casualty insurer providing insurance required by the mortgage lender(s), requires repairs to the Property, Buyer will, upon receiving the requirements, deliver a copy of the requirements to Seller. Within 5 DAYS of receiving the copy of the requirements, Seller will notify Buyer whether Seller will make the required repairs at Seller's expense.
- If Seller makes the required repairs to the satisfaction of the mortgage lender and/or insurer, Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement.
  - If Seller will not make the required repairs, or if Seller fails to respond within the stated time, Buyer will, within 5 DAYS, notify Seller of Buyer's choice to:
    - Make the repairs/improvements at Buyer's expense, with permission and access to the Property given by Seller, which will not be unreasonably withheld, OR
    - Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.
- If Buyer fails to respond within the time stated in Paragraph 8(H)(2) or fails to terminate this Agreement by written notice to Seller within that time, Buyer will accept the Property, make the required repairs/improvements at Buyer's expense and agree to the RELEASE in Paragraph 28 of this Agreement.

#### FHA/VA, IF APPLICABLE

- (I) It is expressly agreed that notwithstanding any other provisions of this contract, Buyer will not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Buyer has been given, in accordance with HUD/FHA or VA requirements, a written statement by the Federal Housing Commissioner, Veterans Administration, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than \$\_\_\_\_\_ (the Purchase Price as stated in this Agreement). Buyer will have the privilege and option of proceeding with consummation of the contract without regard to the amount of the appraised valuation. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development will insure. HUD does not warrant the value nor the condition of the Property. Buyer should satisfy himself/herself that the price and condition of the Property are acceptable.

Warning: Section 1010 of Title 18, U.S.C., Department of Housing and Urban Development and Federal Housing Administration Transactions, provides, "Whoever for the purpose of . . . influencing in any way the action of such Department, makes, passes, utters or publishes any statement, knowing the same to be false shall be fined under this title or imprisoned not more than two years, or both."

- (J) U.S. Department of Housing and Urban Development (HUD) NOTICE TO PURCHASERS: Buyer's Acknowledgement
- ☐ Buyer has received the HUD Notice "For Your Protection: Get a Home Inspection." Buyer understands the importance of getting an independent home inspection and has thought about this before signing this Agreement. Buyer understands that FHA will not perform a home inspection nor guarantee the price or condition of the Property.

(K) Certification We the undersigned, Seller(s) and Buyer(s) party to this transaction each certify that the terms of this contract for purchase are true to the best of our knowledge and belief, and that any other agreement entered into by any of these parties in connection with this transaction is attached to this Agreement.

#### 178 9. CHANGE IN BUYER'S FINANCIAL STATUS (4-14)

179 In the event of a change in Buyer's financial status affecting Buyer's ability to purchase, Buyer shall promptly notify Seller and  
 180 lender(s) to whom the Buyer submitted a mortgage application, if any, in writing. A change in financial status includes, but is not limited to, loss or a change in employment; failure or loss of sale of Buyer's home; Buyer's having incurred a new financial obligation; entry of a judgment against Buyer. Buyer understands that applying for and/or incurring an additional financial obligation may affect Buyer's ability to purchase.

#### 184 10. SELLER REPRESENTATIONS (4-14)

##### 185 (A) Status of Water

186 Seller represents that the Property is served by:

187 ☒ Public Water ☐ Community Water ☐ On-site Water ☐ None ☐

188 Buyer Initials: KEF

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Seller Initials: JP

## (B) Status of Sewer

## 1. Seller represents that the Property is served by:

- ☒ Public Sewer      ☐ Community Sewage Disposal System      ☐ Ten-Acre Permit Exemption (see Sewage Notice 2)  
☐ Individual On-lot Sewage Disposal System (see Sewage Notice 1)      ☐ Holding Tank (see Sewage Notice 3)  
☐ Individual On-lot Sewage Disposal System in Proximity to Well (see Sewage Notice 1; see Sewage Notice 4, if applicable)  
☐ None (see Sewage Notice 1)      ☐ None Available/Permit Limitations in Effect (see Sewage Notice 5)

## 2. Notices Pursuant to the Pennsylvania Sewage Facilities Act

Notice 1: There is no currently existing community sewage system available for the subject property. Section 7 of the Pennsylvania Sewage Facilities Act provides that no person shall install, construct, request bid proposals for construction, alter, repair or occupy any building or structure for which an individual sewage system is to be installed, without first obtaining a permit. Buyer is advised by this notice that, before signing this Agreement, Buyer should contact the local agency charged with administering the Act to determine the procedure and requirements for obtaining a permit for an individual sewage system. The local agency charged with administering the Act will be the municipality where the Property is located or that municipality working cooperatively with others.

Notice 2: This Property is serviced by an individual sewage system installed under the ten-acre permit exemption provisions of Section 7 of the Pennsylvania Sewage Facilities Act. (Section 7 provides that a permit may not be required before installing, constructing, awarding a contract for construction; altering, repairing or connecting to an individual sewage system where a ten-acre parcel or lot is subdivided from a parent tract after January 10, 1987). Buyer is advised that soils and site testing were not conducted and that, should the system malfunction, the owner of the Property or properties serviced by the system at the time of a malfunction may be held liable for any contamination, pollution, public health hazard or nuisance which occurs as a result.

Notice 3: This Property is serviced by a holding tank (permanent or temporary) to which sewage is conveyed by a water carrying system and which is designed and constructed to facilitate ultimate disposal of the sewage at another site. Pursuant to the Pennsylvania Sewage Facilities Act, Seller must provide a history of the annual cost of maintaining the tank from the date of its installation or December 14, 1995, whichever is later.

Notice 4: An individual sewage system has been installed at an isolation distance from a well that is less than the distance specified by regulation. The regulations at 25 Pa. Code §73.13 pertaining to minimum horizontal isolation distances provide guidance. Subsection (b) of §73.13 states that the minimum horizontal isolation distance between an individual water supply or water supply system suction line and treatment tanks shall be 50 feet. Subsection (c) of §73.13 states that the horizontal isolation distance between the individual water supply or water supply system suction line and the perimeter of the absorption area shall be 100 feet.

Notice 5: This lot is within an area in which permit limitations are in effect and is subject to those limitations. Sewage facilities are not available for this lot and construction of a structure to be served by sewage facilities may not begin until the municipality completes a major planning requirement pursuant to the Pennsylvania Sewage Facilities Act and regulations promulgated thereunder.

## (C) Historic Preservation

Seller is not aware of historic preservation restrictions regarding the Property unless otherwise stated here: \_\_\_\_\_

## (D) Land Use Restrictions

1. ☐ Property, or a portion of it, is subject to land use restrictions and may be preferentially assessed for tax purposes under the following Act(s) (see Notices Regarding Land Use Restrictions below):

- ☐ Agricultural Area Security Law (Right-to-Farm Act; Act 43 of 1981; 33 P.S. § 901 et seq.)  
☐ Farm and Forest Land Assessment Act (Clean and Green Program; Act 319 of 1974; 72 P.S. § 5490.1 et seq.)  
☐ Open Space Act (Act 442 of 1967; 32 P.S. § 5001 et seq.)  
☐ Conservation Reserve Program (16 U.S.C. § 3831 et seq.)  
☐ Other \_\_\_\_\_

## 2. Notices Regarding Land Use Restrictions

- a. Pennsylvania Right-To-Farm Act: The property you are buying maybe located in an area where agricultural operations take place. Pennsylvania protects agricultural resources for the production of food and agricultural products. The law limits its circumstances where normal agricultural operations may be subject to nuisance lawsuits or restrictive ordinances.
- b. Clean and Green Program: Properties enrolled in the Clean and Green Program receive preferential property tax assessment. Buyer and Seller have been advised of the need to contact the County Tax Assessment Office before the execution of this Agreement to determine the property tax implications that will or may result from the sale of the Property, or that may result in the future as a result of any change in use of the Property or the land from which it is being separated.
- c. Open Space Act: This Act enables counties to enter into covenants with owners of land designated as farm, forest, water supply, or open space land on an adopted municipal, county or regional plan for the purpose of preserving the land as open space. A covenant between the owner and county is binding upon any Buyer of the Property during the period of time that the covenant is in effect (5 or 10 years). Covenants automatically renew at the end of the covenant period unless specific termination notice procedures are followed. Buyer has been advised of the need to determine the restrictions that will apply from the sale of the Property to Buyer and the property tax implications that will or may result from a change in use of the Property, or any portion of it. Buyer is further advised to determine the term of any covenant now in effect.

249 Buyer Initials: ACF

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Seller Initials: JP



d. Conservation Reserve (Enhancement) Program: Properties enrolled in the Conservation Reserve Program or CRHP are environmentally-sensitive areas, the owners of which receive compensation in exchange for an agreement to maintain the land in its natural state. Contracts last from 10 to 15 years and carry penalties to Seller if terminated early by Buyer. Buyer has been advised of the need to determine the restrictions on development of the Property and the term of any contract now in effect. Seller is advised to determine the financial implications that will or may result from the sale of the Property.

(E) Real Estate Seller Disclosure Law

Generally, the Real Estate Seller Disclosure Law requires that before an agreement of sale is signed, the seller in a residential real estate transfer must make certain disclosures regarding the property to potential buyers in a form defined by the law. A residential real estate transfer is defined as a sale, exchange, installment sales contract, lease with an option to buy, grant or other transfer of an interest in real property where NOT LESS THAN ONE AND NOT MORE THAN FOUR RESIDENTIAL DWELLING UNITS are involved. Disclosures for condominiums and cooperatives are limited to the seller's particular unit(s). Disclosures regarding common areas or facilities are not required, as those elements are already addressed in the laws that govern the resale of condominium and cooperative interests.

(F) Public and/or Private Assessments

1. Seller represents that, as of the date Seller signed this Agreement, no public improvement, condominium or homeowner association assessments have been made against the Property which remain unpaid, and that no notice by any government or public authority (excluding assessed value) has been served upon Seller or anyone on Seller's behalf, including notices relating to violations of zoning, housing, building, safety or fire ordinances that remain uncorrected, and that Seller knows of no condition that would constitute a violation of any such ordinances that remain uncorrected, unless otherwise specified here: \_\_\_\_\_

2. Seller knows of no other potential notices (including violations) and/or assessments except as follows: \_\_\_\_\_

(G) Highway Occupancy Permit

Access to a public road may require issuance of a highway occupancy permit from the Department of Transportation.

11. WAIVER OF CONTINGENCIES (9-05)

If this Agreement is contingent on Buyer's right to inspect and/or repair the Property, or to verify insurability, environmental conditions, boundaries, certifications, zoning classification or use, or any other information regarding the Property, Buyer's failure to exercise any of Buyer's options within the times set forth in this Agreement is a WAIVER of that contingency and Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement.

12. BUYER'S DUE DILIGENCE/INSPECTIONS (4-14)

(A) Rights and Responsibilities

1. Seller will provide access to insurers' representatives and, as may be required by this Agreement or by mortgage lender(s), to surveyors, municipal officials, appraisers and inspectors. All parties and their real estate licensee(s) may attend any inspections.
2. Buyer may make a pre-settlement walk-through inspection of the Property. Buyer's right to this inspection is not waived by any other provision of this Agreement.
3. Seller will have heating and all utilities (including fuel(s)) on for all inspections/appraisals.
4. All inspectors, including home inspectors, are authorized by Buyer to provide a copy of any inspection Report to Broker for Buyer.
5. Seller has the right, upon request, to receive a free copy of any inspection Report from the party for whom it was prepared.

(B) Buyer waives or elects at Buyer's expense to have the following inspections, certifications, and investigations (referred to as "Inspection" or "Inspections") performed by professional contractors, home inspectors, engineers, architects and other properly licensed or otherwise qualified professionals. All inspections shall be performed in a non-invasive manner, unless otherwise agreed in writing. If the same inspector is inspecting more than one system, the inspector must comply with the Home Inspection Law, (See Paragraph 12(D) for Notices Regarding Property and Environmental Inspections)

(C) For elected inspection(s), Buyer will, within the Contingency Period stated in Paragraph 13 (A), complete Inspections, obtain any Inspection Reports or results (referred to as "Report" or "Reports"), and accept the Property, terminate this Agreement, or submit a written corrective proposal to Seller, according to the terms of Paragraph 13 (B).

Home/Property Inspections and Environmental Hazards (mold, etc.)

Elect   NCF   Buyer may conduct an inspection of the Property's structural components; roof; exterior windows and exterior doors; exterior building material, fascia, gutters and downspouts; swimming pools, hot tubs and spas; appliances; electrical systems; interior and exterior plumbing; public sewer systems; heating and cooling systems; water penetration; electromagnetic fields; wetlands and flood plain delineation; structure square footage; mold and other environmental hazards (e.g., fungi, indoor air quality, asbestos, underground storage tanks, etc.); and any other items Buyer may select. If Buyer elects to have a home inspection of the Property, as defined in the Home Inspection Law, the home inspection must be performed by a full member in good standing of a national home inspection association, or a person supervised by a full member of a national home inspection association, in accordance with the ethical standards and code of conductor practice of that association, or by a properly licensed or registered engineer or architect. (See Notices Regarding Property & Environmental Inspections)

Wood Infestation

Elect   NCF   Buyer may obtain a written "Wood-Destroying Insect Infestation Inspection Report" from an inspector certified as a wood-destroying pests pesticide applicator and will deliver it and all supporting documents and drawings provided by the inspector to Seller. The Report is to be made satisfactory to and in compliance with applicable laws, mortgage lender requirements, and/or Federal Insuring and Guaranteeing Agency requirements. The Inspection is to be

312 Buyer Initials:   NCF  

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Seller Initials:   VP

313 limited to all readily-visible and accessible areas of all structures on the Property, except fences. If the Inspection  
 314 reveals active infestation(s), Buyer, at Buyer's expense, may obtain a Proposal from a wood-destroying pests pes-  
 315 ticide applicator to treat the Property. If the Inspection reveals damage from active or previous infestation(s), Buyer  
 316 may obtain a written Report from a professional contractor, home inspector or structural engineer that is limited to  
 317 structural damage to the Property caused by wood-destroying organisms and a Proposal to repair the Property.  
 318 Deeds, Restrictions and Zoning

319 Elected Buyer may investigate easements, deed and use restrictions (including any historic-preservation restrictions or ordi- Waived  
 320 nances) that apply to the Property and review local zoning ordinances. Buyer may verify that the present use of the Property  
 321 (such as in-law quarters, apartments, home office, day care) is permitted and may elect to make the  
 322 Agreement contingent upon an anticipated use. Present use: \_\_\_\_\_  
 323 Water Service

324 Elected Buyer may obtain an Inspection of the quality and quantity of the water system from a properly licensed or other Waived  
 325 wise qualified water/well testing company. If and as required by the inspection company, Seller, at Seller's expense,  
 326 will locate and provide access to the on-site (or individual) water system. Seller will restore the Property  
 327 to its previous condition, at Seller's expense, prior to settlement.  
 328 Radon

329 Elected Buyer may obtain a radon test of the Property from a certified inspector. The U.S. Environmental Protection Waived  
 330 Agency (EPA) advises corrective action if the average annual exposure to radon is equal to or higher than 0.02  
 331 working levels or 4 picoCuries/liter (4pCi/L). Radon is a natural, radioactive gas that is produced in the ground by  
 332 the normal decay of uranium and radium. Studies indicate that extended exposure to high levels of radon gas can  
 333 increase the risk of lung cancer. Radon can find its way into any air-space and can permeate a structure. If a house  
 334 has a radon problem, it usually can be cured by increased ventilation and/or by preventing radon entry. Any per-  
 335 son who tests, mitigates or safeguards a building for radon in Pennsylvania must be certified by the Department of  
 336 Environmental Protection. Information about radon and about certified testing or mitigation firms is available  
 337 through Department of Environmental Protection, Bureau of Radiation Protection, 13th Floor, Rachel Carson State  
 338 Office Building, P.O. Box 8469, Harrisburg, PA 17105-8469, (800) 23RADON or (717) 783-3594. www.epa.gov  
 339 On-lot Sewage (If Applicable)

340 Elected Buyer may obtain an Inspection of the individual on-lot sewage disposal system from a qualified, professional Waived  
 341 inspector. If and as required by the inspection company, Seller, at Seller's expense, will locate, provide access to,  
 342 and empty the individual on-lot sewage disposal system. Seller will restore the Property to its previous condition,  
 343 at Seller's expense, prior to settlement. See paragraph 13(C) for more information regarding the Individual On-lot  
 344 Sewage Inspection Contingency.

345 Property and Flood Insurance  
 346 Elected Buyer may determine the insurability of the Property by making application for property and casualty insurance for Waived  
 347 the Property to a responsible insurer. Broker for Buyer, if any, otherwise Broker for Seller, may communicate with  
 348 the insurer to assist in the insurance process. If the Property is located in a flood plain, Buyer may be required to  
 349 carry flood insurance at Buyer's expense, which may need to be ordered 14 days or more prior to Settlement Date.  
 350 Revised flood maps and changes to Federal law may substantially increase future flood insurance premiums or  
 351 require insurance for formerly exempt properties. Buyer should consult with one or more flood insurance agents  
 352 regarding the need for flood insurance and possible premium increases.

353 ~~Property Boundaries~~  
 354 Elected Buyer may engage the services of a surveyor, title abstractor, or other qualified professional to assess the legal Waived  
 355 description, certainty and location of boundaries and/or quantum of land. Most sellers have not had the Property  
 356 surveyed as it is not a requirement of property transfer in Pennsylvania. Any fences, hedges, walls and other natural  
 357 or constructed barriers may or may not represent the true boundary lines of the Property. Any numerical represen-  
 358 tations of size of property are approximations only and may be inaccurate.

359 Lead-Based Paint Hazards (For Properties built prior to 1978 only)  
 360 Elected Before Buyer is obligated to purchase a residential dwelling built prior to 1978, Buyer has the option to conduct a Waived  
 361 risk assessment and/or inspection of the Property for the presence of lead-based paint and/or lead-based paint haz-  
 362 ards. Regardless of whether this inspection is elected or waived, the Residential Lead-Based Paint Hazard  
 363 Reduction Act requires a seller of property built prior to 1978 to provide the Buyer with an EPA-approved  
 364 lead hazards information pamphlet titled "Protect Your Family from Lead in Your Home," along with a sep-  
 365 arate form, attached to this Agreement, disclosing Seller's knowledge of lead-based paint hazards and any  
 366 lead-based paint records regarding the Property.  
 367 Other

368 Elected \_\_\_\_\_ Waived  
 369 \_\_\_\_\_  
 370 \_\_\_\_\_

371 The Inspections elected above do not apply to the following existing conditions and/or items:  
 372 \_\_\_\_\_  
 373 \_\_\_\_\_

374 (D) Notices Regarding Property & Environmental Inspections

375 1. Exterior Building Materials: Poor or improper installation of exterior building materials may result in moisture penetrating  
 376 the surface of a structure where it may cause mold and damage to the building's frame.

377 Buyer Initials: EF

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Seller Initials: JP



2. **Asbestos:** Asbestos is linked with several adverse health effects, including various forms of cancer.
3. **Environmental Hazards:** The U.S. Environmental Protection Agency has a list of hazardous substances, the use and disposal of which are restricted by law. Generally, if hazardous substances are found on a property, it is the property owner's responsibility to dispose of them properly.
4. **Wetlands:** Wetlands are protected by the federal and state governments. Buyer may wish to hire an environmental engineer to investigate whether the Property is located in a wetlands area to determine if permits for plans to build, improve or develop the property would be affected or denied because of its location in a wetlands area.
5. **Mold, Fungus and Indoor Air Quality:** Indoor mold contamination and the inhalation of bioaerosols (bacteria, mold spores, pollen and viruses) have been associated with allergic responses.
6. **Additional Information:** Inquiries or requests for more information about asbestos and other hazardous substances can be directed to the U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460, (202) 272-0167, and/or the Department of Health, Commonwealth of Pennsylvania, Division of Environmental Health, Harrisburg, PA 17120. Information about indoor air quality issues is available through the Pennsylvania Department of Health and may be obtained by contacting Health & Welfare Building, 8th Floor West, 625 Forster St., Harrisburg, PA 17120, or by calling 1-877-724-3258.

### 13. INSPECTION CONTINGENCY (4-14)

(A) The Contingency Period is 15 days (10 if not specified) from the Execution Date of this Agreement for each Inspection elected in Paragraph 12(C).

(B) Except as stated in Paragraph 13(C), if the result of any Inspection elected in Paragraph 12(C) is unsatisfactory to Buyer, Buyer will, within the stated Contingency Period:

1. Accept the Property with the information stated in the Report(s) and agree to the RELEASE in Paragraph 28 of this Agreement, OR
2. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement, OR
3. Present the Report(s) to Seller with a Written Corrective Proposal ("Proposal") listing corrections and/or credits desired by Buyer. The Proposal may, but is not required to, include the name(s) of a properly licensed or qualified professional(s) to perform the corrections requested in the Proposal, provisions for payment, including retests, and a projected date for completion of the corrections. Buyer agrees that Seller will not be held liable for corrections that do not comply with mortgage lender or governmental requirements if performed in a workmanlike manner according to the terms of Buyer's Proposal.

a. Following the end of the Contingency Period, Buyer and Seller will have \_\_\_\_\_ days (5 if not specified) for a Negotiation Period.

(1) During the Negotiation Period, Seller will either agree to satisfy all the terms of Buyer's Proposal or negotiate, by written or verbal communication, another mutually acceptable written agreement, providing for any repairs or improvements to the Property and/or any credit to Buyer at settlement, as acceptable to the mortgage lender, if any.

(2) If Seller agrees to satisfy all the terms of Buyer's Proposal, or Buyer and Seller enter into another mutually acceptable written agreement, Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement and the Negotiation Period ends.

b. If no mutually acceptable written agreement is reached, or if Seller fails to respond, during the Negotiation Period, within \_\_\_\_\_ days (2 if not specified) following the end of the Negotiation Period, Buyer will:

(1) Accept the Property with the information stated in the Report(s) and agree to the RELEASE in Paragraph 28 of this Agreement, OR

(2) Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

If Buyer and Seller do not reach a mutually acceptable written agreement, and Buyer does not terminate this Agreement by written notice to Seller within the time allotted in Paragraph 13(B)(3)(b), Buyer will accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement. Ongoing negotiations do not automatically extend the Negotiation Period.

(C) If a Report reveals the need to expand or replace the existing individual on-lot sewage disposal system, Seller may, within \_\_\_\_\_ days (25 if not specified) of receiving the Report, submit a Proposal to Buyer. The Proposal will include, but not be limited to, the name of the company to perform the expansion or replacement; provisions for payment, including retests; and a projected completion date for corrective measures. Within 5 DAYS of receiving Seller's Proposal, or if no Proposal is provided within the stated time, Buyer will notify Seller in writing of Buyer's choice to:

1. Agree to the terms of the Proposal, accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement, OR
2. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement, OR
3. Accept the Property and the existing system and agree to the RELEASE in Paragraph 28 of this Agreement. If required by any mortgage lender and/or any governmental authority, Buyer will correct the defects before settlement or within the time required by the mortgage lender and/or governmental authority, at Buyer's sole expense, with permission and access to the Property given by Seller, which may not be unreasonably withheld. If Seller denies Buyer permission and/or access to correct the defects, Buyer may, within 5 DAYS of Seller's denial, terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

If Buyer fails to respond within the time stated in Paragraph 13(C) or fails to terminate this Agreement by written notice to Seller within that time, Buyer will accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement.

Buyer Initials: RF

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Seller Initials: JP

## 441 14. REAL ESTATE TAXES AND ASSESSED VALUE (4-14)

442 In Pennsylvania, taxing authorities (school districts and municipalities) and property owners may appeal the assessed value of a prop-  
 443 erty at the time of sale, or at any time thereafter. A successful appeal by a taxing authority may result in a higher assessed value for  
 444 the property and an increase in property taxes. Also, periodic county-wide property reassessments may change the assessed value of  
 445 the property and result in a change in property tax.

## 446 15. NOTICES, ASSESSMENTS AND MUNICIPAL REQUIREMENTS (4-14)

447 (A) In the event any notices of public and/or private assessments as described in Paragraph 10(F) (excluding assessed value) are  
 448 received after Seller has signed this Agreement and before settlement, Seller will within 5 DAYS of receiving the notices  
 449 and/or assessments provide a copy of the notices and/or assessments to Buyer and will notify Buyer in writing that Seller will:

- 450 1. Fully comply with the notices and/or assessments, at Seller's expense, before settlement. If Seller fully complies with the  
 451 notices and/or assessments, Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement, OR  
 452 2. Not comply with the notices and/or assessments. If Seller chooses not to comply with the notices and/or assessments, or fails  
 453 within the stated time to notify Buyer whether Seller will comply, Buyer will notify Seller in writing within 5 DAYS  
 454 that Buyer will:

- 455 a. Comply with the notices and/or assessments at Buyer's expense, accept the Property, and agree to the RELEASE in  
 456 Paragraph 28 of this Agreement, OR  
 457 b. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of  
 458 Paragraph 26 of this Agreement.

459 If Buyer fails to respond within the time stated in Paragraph 15(A)(2) or fails to terminate this Agreement by written notice to  
 460 Seller within that time, Buyer will accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement.

461 (B) If required by law, within 30 DAYS from the Execution Date of this Agreement, but in no case later than 15 DAYS prior to  
 462 Settlement Date, Seller will order at Seller's expense a certification from the appropriate municipal department(s) disclosing notice  
 463 of any uncorrected violations of zoning, housing, building, safety or fire ordinances and/or a certificate permitting occupancy of the  
 464 Property. If Buyer receives a notice of any required repairs/improvements, Buyer will promptly deliver a copy of the notice to Seller.

- 465 1. Within 5 DAYS of receiving notice from the municipality that repairs/improvements are required, Seller will deliver a  
 466 copy of the notice to Buyer and notify Buyer in writing that Seller will:

- 467 a. Make the required repairs/improvements to the satisfaction of the municipality. If Seller makes the required repairs/improvements,  
 468 Buyer accepts the Property and agrees to the RELEASE in Paragraph 28 of this Agreement, OR  
 469 b. Not make the required repairs/improvements. If Seller chooses not to make the required repairs/improvements, Buyer will  
 470 notify Seller in writing within 5 DAYS that Buyer will:

- 471 (1) Make the repairs/improvements at Buyer's expense, with permission and access to the Property given by Seller, which  
 472 will not be unreasonably withheld, OR  
 473 (2) Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms  
 474 of Paragraph 26 of this Agreement.

475 If Buyer fails to respond within the time stated in Paragraph 15(B)(1)(b) or fails to terminate this Agreement by written  
 476 notice to Seller within that time, Buyer will accept the Property and agree to the RELEASE in Paragraph 28 of this  
 477 Agreement, and Buyer accepts the responsibility to perform the repairs/improvements according to the terms of the  
 478 notice provided by the municipality.

- 479 2. If Seller denies Buyer permission to make the required repairs/improvements, or does not provide Buyer access before  
 480 Settlement Date to make the required repairs/improvements, Buyer may, within 5 DAYS, terminate this Agreement by  
 481 written notice to Seller, with all deposit monies returned to Buyer according to the terms of Paragraph 26 of this Agreement.

482 ~~3. If repairs/improvements are required and Seller fails to provide a copy of the notice to Buyer as required in this Paragraph, Seller~~  
 483 ~~will perform all repairs/improvements as required by the notice at Seller's expense. Paragraph 15(B)(3) will survive settlement.~~

## 484 16. CONDOMINIUM/PLANNED COMMUNITY (HOMESOWNER ASSOCIATIONS) RESALE NOTICE (1-10)

485 (A) Property is NOT a Condominium or part of a Planned Community unless checked below.

486 ☐ CONDOMINIUM. The Property is a unit of a condominium that is primarily run by a unit owners' association. Section 3407 of  
 487 the Uniform Condominium Act of Pennsylvania requires Seller to furnish Buyer with a Certificate of Resale and copies of the  
 488 condominium declaration (other than plats and plans), the bylaws and the rules and regulations of the association.

489 ☐ PLANNED COMMUNITY (HOMESOWNER ASSOCIATION). The Property is part of a planned community as defined by  
 490 the Uniform Planned Community Act. Section 3407(a) of the Act requires Seller to furnish Buyer with a copy of the declara-  
 491 tion (other than plats and plans), the bylaws, the rules and regulations of the association, and a Certificate containing the pro-  
 492 visions set forth in Section 3407(a) of the Act.

493 (B) THE FOLLOWING APPLIES TO PROPERTIES THAT ARE PART OF A CONDOMINIUM OR A PLANNED COMMUNITY:

- 494 1. Within 15 DAYS from the Execution Date of this Agreement, Seller, at Seller's expense, will request from the associa-  
 495 tion a Certificate of Resale and any other documents necessary to enable Seller to comply with the relevant Act. The Act pro-  
 496 vides that the association is required to provide these documents within 10 days of Seller's request.

497 2. Seller will promptly deliver to Buyer all documents received from the association. Under the Act, Seller is not liable to Buyer  
 498 for the failure of the association to provide the Certificate in a timely manner or for any incorrect information provided by the  
 499 association in the Certificate.

500 3. The Act provides that Buyer may declare this Agreement VOID at any time before Buyer receives the association documents and for  
 501 5 days after receipt, OR until settlement, whichever occurs first. Buyer's notice to Seller must be in writing; upon Buyer declaring  
 502 this Agreement void, all deposit monies will be returned to Buyer according to the terms of Paragraph 26 of this Agreement.

503 Buyer Initials: B.F.

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Seller Initials: RP



504 4. If the association has the right to buy the Property (right of first refusal), and the association exercises that right, Seller will  
 505 reimburse Buyer for any costs incurred by Buyer for any inspections or certifications obtained according to the terms of the  
 506 Agreement, and any costs incurred by Buyer for: (1) Title search, title insurance and/or mechanics' lien insurance, or any fee  
 507 for cancellation; (2) Flood insurance, fire insurance, hazard insurance, mine subsidence insurance, or any fee for cancellation;  
 508 (3) Appraisal fees and charges paid in advance to mortgage lender.

509 **17. TITLES, SURVEYS AND COSTS (4-14)**

- 510 (A) The Property will be conveyed with good and marketable title that is insurable by a reputable title insurance company at the reg-  
 511 ular rates, free and clear of all liens, encumbrances, and easements, excepting however the following: existing deed restrictions;  
 512 historic preservation restrictions or ordinances; building restrictions; ordinances; easements of roads; easements visible upon the  
 513 ground; easements of record; and privileges or rights of public service companies, if any.  
 514 (B) Buyer will pay for the following: (1) Title search, title insurance and/or mechanics' lien insurance, or any fee for cancellation;  
 515 (2) Flood insurance, fire insurance, hazard insurance, mine subsidence insurance, or any fee for cancellation; (3) Appraisal fees  
 516 and charges paid in advance to mortgage lender; (4) Buyer's customary settlement costs and accruals.  
 517 (C) Seller has the right, upon request, to receive a free copy of any title abstract for the Property from the party for whom it was prepared.  
 518 (D) Any survey or surveys required by the title insurance company or the abstracting company for preparing an adequate legal  
 519 description of the Property (or the correction thereof) will be obtained and paid for by Seller. Any survey or surveys desired by  
 520 Buyer or required by the mortgage lender will be obtained and paid for by Buyer.  
 521 (E) In the event of a change in Seller's financial status affecting Seller's ability to convey title to the Property on or before the  
 522 Settlement Date, or any extension thereof, Seller shall promptly notify Buyer in writing. A change in financial status includes,  
 523 but is not limited to, Seller filing bankruptcy; filing of a foreclosure lawsuit against the Property; entry of a monetary judgment  
 524 against Seller; notice of public tax sale affecting the Property; and Seller learning that the sale price of the Property is no longer  
 525 sufficient to satisfy all liens and encumbrances against the Property.  
 526 (F) If Seller is unable to give good and marketable title that is insurable by a reputable title insurance company at the regular rates, as  
 527 specified in Paragraph 17(A), Buyer may terminate this Agreement by written notice to Seller, with all deposit monies returned to  
 528 Buyer according to the terms of Paragraph 26 of this Agreement. Upon termination, Seller will reimburse Buyer for any costs  
 529 incurred by Buyer for any inspections or certifications obtained according to the terms of this Agreement, and for those items spec-  
 530 ified in Paragraph 17(B) Items (1), (2), (3) and in Paragraph 17(D).  
 531 (G) Oil, gas, mineral, or other rights of this Property may have been previously conveyed or leased, and Sellers make no representa-  
 532 tion about the status of those rights unless indicated elsewhere in this Agreement.  
 533 ☐ Oil, Gas and Mineral Rights Addendum (FAR Form OGM) is attached to and made part of this Agreement.  
 534 (H) **COAL NOTICE (Where Applicable)**

535 THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHTS OF SUPPORT UNDERNEATH  
 536 THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL  
 537 RIGHT TO REMOVE ALL SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE,  
 538 BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. (This notice is set forth in the manner provided in Section 1 of the Act of  
 539 July 17, 1957, P.L. 984.) "Buyer acknowledges that he may not be obtaining the right of protection against subsidence resulting  
 540 from coal mining operations, and that the property described herein may be protected from damage due to mine subsidence by a  
 541 private contract with the owners of the economic interests in the coal. This acknowledgement is made for the purpose of com-  
 542 plying with the provisions of Section 14 of the Bituminous Mine Subsidence and the Land Conservation Act of April 27, 1966."  
 543 Buyer agrees to sign the deed from Seller which deed will contain the aforesaid provision.

544 ~~(I) The Property is not a "recreational cabin" as defined in the Pennsylvania Conservation Code Act unless otherwise stated here.~~

545 ~~(J) This property is not subject to a Private Transfer Fee Obligation unless otherwise stated here:~~

- 546 ☐ Private Transfer Fee Addendum (FAR Form PTF) is attached to and made part of this Agreement.  
 547 2. Notices Regarding Private Transfer Fees: In Pennsylvania, Private Transfer Fees are defined and regulated in the Private Transfer  
 548 Fee Obligation Act (Act 1 of 2011; 68 Pa.C.S. §§ 8101, et. seq.), which defines a Private Transfer Fee as "a fee that is payable upon  
 549 the transfer of an interest in real property, or payable for the right to make or accept the transfer, if the obligation to pay the fee or charge  
 550 runs with title to the property or otherwise binds subsequent owners of property, regardless of whether the fee or charge is a fixed  
 551 amount or is determined as a percentage of the value of the property, the purchase price or other consideration given for the transfer."  
 552 A Private Transfer Fee must be properly recorded to be binding, and sellers must disclose the existence of the fees to prospective buy-  
 553 ers: Where a Private Transfer Fee is not properly recorded or disclosed, the Act gives certain rights and protections to buyers.  
 554

555 **18. MAINTENANCE AND RISK OF LOSS (1-14)**

- 556 (A) Seller will maintain the Property (including, but not limited to, structures, grounds, fixtures, appliances, and personal property)  
 557 specifically listed in this Agreement in its present condition, normal wear and tear excepted.  
 558 (B) If any part of the Property included in the sale fails before settlement, Seller will:  
 559 1. Repair or replace that part of the Property before settlement, OR  
 560 2. Provide prompt written notice to Buyer of Seller's decision to:  
 561 a. Credit Buyer at settlement for the fair market value of the failed part of the Property, as acceptable to the mortgage lender,  
 562 if any, OR  
 563 b. Not repair or replace the failed part of the Property, and not credit Buyer at settlement for the fair market value of the  
 564 failed part of the Property.  
 565 3. If Seller does not repair or replace the failed part of the Property or agree to credit Buyer for its fair market value, or if Seller  
 566 fails to notify Buyer of Seller's choice, Buyer will notify Seller in writing within 5 DAYS or before Settlement Date,  
 567 whichever is earlier, that Buyer will:

568 Buyer Initials: CF

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Seller Initials: VP

- 569 a. Accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement, OR  
 570 b. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of  
 571 Paragraph 26 of this Agreement.  
 572 If Buyer fails to respond within the time stated in Paragraph 18(B)(3) or fails to terminate this Agreement by written notice  
 573 to Seller within that time, Buyer will accept the Property and agree to the RELEASE in Paragraph 28 of this Agreement.  
 574 (C) Seller bears the risk of loss from fire or other casualties until settlement. If any property included in this sale is destroyed and not  
 575 replaced prior to settlement, Buyer will:  
 576 1. Accept the Property in its then current condition together with the proceeds of any insurance recovery obtainable by Seller, OR  
 577 2. Terminate this Agreement by written notice to Seller, with all deposit monies returned to Buyer according to the terms of  
 578 Paragraph 26 of this Agreement.

579 **19. HOME WARRANTIES (1-10)**

580 At or before settlement, either party may purchase a home warranty for the Property from a third-party vendor. Buyer and Seller under-  
 581 stand that a home warranty for the Property does not alter any disclosure requirements of Seller, will not cover or warrant any pre-  
 582 existing defects of the Property, and will not alter, waive or extend any provisions of this Agreement regarding inspections or certifi-  
 583 cations that Buyer has elected or waived as part of this Agreement. Buyer and Seller understand that a broker who recommends a home  
 584 warranty may have a business relationship with the home warranty company that provides a financial benefit to the broker.

585 **20. RECORDING (9-05)**

586 This Agreement will not be recorded in the Office of the Recorder of Deeds or in any other office or place of public record. If Buyer  
 587 causes or permits this Agreement to be recorded, Seller may elect to treat such act as a default of this Agreement.

588 **21. ASSIGNMENT (1-10)**

589 This Agreement is binding upon the parties, their heirs, personal representatives, guardians and successors, and to the extent assigna-  
 590 ble, on the assigns of the parties hereto. Buyer will not transfer or assign this Agreement without the written consent of Seller unless  
 591 otherwise stated in this Agreement. Assignment of this Agreement may result in additional transfer taxes.

592 **22. GOVERNING LAW, VENUE AND PERSONAL JURISDICTION (9-05)**

593 (A) The validity and construction of this Agreement, and the rights and duties of the parties, will be governed in accordance with the  
 594 laws of the Commonwealth of Pennsylvania.

595 (B) The parties agree that any dispute, controversy or claim arising under or in connection with this Agreement or its performance by either  
 596 party submitted to a court shall be filed exclusively by and in the state or federal courts sitting in the Commonwealth of Pennsylvania.

597 **23. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT OF 1980 (FIRPTA) (4-14)**

598 The disposition of a U.S. real property interest by a foreign person (the transferor) is subject to the Foreign Investment in Real Property  
 599 Tax Act of 1980 (FIRPTA) income tax withholding. FIRPTA authorized the United States to tax foreign persons on dispositions of  
 600 600 U.S. real property interests. This includes but is not limited to a sale or exchange, liquidation, redemption, gift, transfers, etc. Persons  
 601 purchasing U.S. real property interests (transferee) from foreign persons, certain purchasers' agents, and settlement officers are  
 602 required to withhold 10 percent of the amount realized (special rules for foreign corporations). Withholding is intended to ensure U.S.  
 603 taxation of gains realized on disposition of such interests. The transferee/Buyer is the withholding agent. If you are the  
 604 transferee/Buyer you must find out if the transferor is a foreign person as defined by the Act. If the transferor is a foreign person and  
 605 you fail to withhold, you may be held liable for the tax.

606 **24. NOTICE REGARDING CONVICTED SEX OFFENDERS (MEGAN'S LAW) (4-14)**

607 The Pennsylvania General Assembly has passed legislation (often referred to as "Megan's Law," 42 Pa.C.S. § 9791 et seq.) providing  
 608 for community notification of the presence of certain convicted sex offenders. Buyers are encouraged to contact the municipal  
 609 police department or the Pennsylvania State Police for information relating to the presence of sex offenders near a particular prop-  
 610 erty, or to check the information on the Pennsylvania State Police Web site at [www.pd.meganslaw.state.pa.us](http://www.pd.meganslaw.state.pa.us).

611 **25. REPRESENTATIONS (1-10)**

612 (A) All representations, claims, advertising, promotional activities, brochures or plans of any kind made by Seller, Brokers, their  
 613 licensees, employees, officers or partners are not a part of this Agreement unless expressly incorporated or stated in this  
 614 Agreement. This Agreement contains the whole agreement between Seller and Buyer, and there are no other terms, obligations,  
 615 covenants, representations, statements or conditions, oral or otherwise, of any kind whatsoever concerning this sale. This  
 616 Agreement will not be altered, amended, changed or modified except in writing executed by the parties.

617 (B) Unless otherwise stated in this Agreement, Buyer has inspected the Property (including fixtures and any personal property  
 618 specifically listed herein) before signing this Agreement or has waived the right to do so, and agrees to purchase the  
 619 Property IN ITS PRESENT CONDITION, subject to inspection contingencies elected in this Agreement. Buyer acknowledges  
 620 that Brokers, their licensees, employees, officers or partners have not made an independent examination or determination of the  
 621 structural soundness of the Property, the age or condition of the components, environmental conditions, the permitted uses, nor  
 622 of conditions existing in the locale where the Property is situated; nor have they made a mechanical inspection of any of the sys-  
 623 tems contained therein.

624 (C) Any repairs required by this Agreement will be completed in a workmanlike manner.

625 (D) Broker(s) have provided or may provide services to assist unrepresented parties in complying with this Agreement.

626 **26. DEFAULT, TERMINATION AND RETURN OF DEPOSITS (4-14)**

627 (A) Where Buyer terminates this Agreement pursuant to any right granted by this Agreement, Buyer will be entitled to a return of all  
 628 deposit monies paid on account of Purchase Price pursuant to the terms of Paragraph 26(B), and this Agreement will be VOID.  
 629 Termination of this Agreement may occur for other reasons giving rise to claims by Buyer and/or Seller for the deposit monies.

630 (B) Regardless of the apparent entitlement to deposit monies, Pennsylvania law does not allow a Broker Holding deposit monies to  
 631 determine who is entitled to the deposit monies when settlement does not occur. Broker can only release the deposit monies:

632 1. If this Agreement is terminated prior to settlement and there is no dispute over entitlement to the deposit monies. A written  
 633 agreement signed by both parties is evidence that there is no dispute regarding deposit monies.

634 Buyer Initials: KE

ASR Page 11 of 13

Seller Initials: JP



- 635 2. If, after Broker has received deposit monies, Broker receives a written agreement that is signed by Buyer and Seller,  
 636 directing Broker how to distribute some or all of the deposit monies;  
 637 3. According to the terms of a final order of court.  
 638 4. According to the terms of a prior written agreement between Buyer and Seller that directs the Broker how to distribute  
 639 the deposit monies if there is a dispute between the parties that is not resolved. (See Paragraph 26(C))  
 640 (C) Buyer and Seller agree that if there is a dispute over the entitlement to deposit monies that is unresolved 90 days (180 if  
 641 not specified) after the Settlement Date stated in Paragraph 4(A), or any written extensions thereof, the Broker holding the  
 642 deposit monies will, within 30 days of receipt of Buyer's written request, distribute the deposit monies to Buyer unless the  
 643 Broker is in receipt of verifiable written notice that the dispute is the subject of litigation or mediation. If Broker has received  
 644 verifiable written notice of litigation prior to the receipt of Buyer's request for distribution, Broker will continue to hold the  
 645 deposit monies until receipt of a written distribution agreement between Buyer and Seller or a final court order. Buyer and Seller  
 646 are advised to initiate litigation for any portion of the deposit monies prior to any distribution made by Broker pursuant to this  
 647 paragraph. Buyer and Seller agree that the distribution of deposit monies based upon the passage of time does not legally deter-  
 648 mine entitlement to deposit monies, and that the parties maintain their legal rights to pursue litigation even after a distribution  
 649 is made.  
 650 (D) Buyer and Seller agree that a Broker who holds or distributes deposit monies pursuant to the terms of Paragraph 26 or  
 651 Pennsylvania law will not be liable. Buyer and Seller agree that if any Broker or affiliated licensee is named in litigation  
 652 regarding deposit monies, the attorneys' fees and costs of the Broker(s) and licensee(s) will be paid by the party naming  
 653 them in litigation.  
 654 (E) Seller has the option of retaining all sums paid by Buyer, including the deposit monies, should Buyer:  
 655 1. Fail to make any additional payments as specified in Paragraph 2, OR  
 656 2. Furnish false or incomplete information to Seller, Broker(s), or any other party identified in this Agreement concerning  
 657 Buyer's legal or financial status, OR  
 658 3. Violate or fail to fulfill and perform any other terms or conditions of this Agreement.  
 659 (F) Unless otherwise checked in Paragraph 26(G), Seller may elect to retain those sums paid by Buyer, including deposit monies:  
 660 1. On account of purchase price, OR  
 661 2. As monies to be applied to Seller's damages, OR  
 662 3. As liquidated damages for such default.  
 663 (G) ☒ SELLER IS LIMITED TO RETAINING SUMS PAID BY BUYER, INCLUDING DEPOSIT MONIES, AS LIQUIDATED  
 664 DAMAGES.  
 665 (H) If Seller retains all sums paid by Buyer, including deposit monies, as liquidated damages pursuant to Paragraph 26(F) or (G),  
 666 Buyer and Seller are released from further liability or obligation and this Agreement is VOID.  
 667 (I) Brokers and licensees are not responsible for unpaid deposits.  
 668 27. MEDIATION (1-10)  
 669 Buyer and Seller will submit all disputes or claims that arise from this Agreement, including disputes and claims over deposit monies,  
 670 to mediation. Mediation will be conducted in accordance with the Rules and Procedures of the Home Sellers/Home Buyers Dispute  
 671 Resolution System, unless it is not available, in which case Buyer and Seller will mediate according to the terms of the mediation sys-  
 672 tem offered or endorsed by the local Association of Realtors®. Mediation fees, contained in the mediator's fee schedule, will be  
 673 divided equally among the parties and will be paid before the mediation conference. This mediation process must be concluded before  
 674 any party to the dispute may initiate legal proceedings in any courtroom, with the exception of filing a summons if it is necessary to  
 675 stop any statute of limitations from expiring. Any agreement reached through mediation and signed by the parties will be binding. Any  
 676 agreement to mediate disputes or claims arising from this Agreement will survive settlement.  
 677 28. RELEASE (9-05)  
 678 Buyer releases, quit claims and forever discharges SELLER, ALL BROKERS, their LICENSEES, EMPLOYEES and any  
 679 OFFICER or PARTNER of any one of them and any other PERSON, FIRM or CORPORATION who may be liable by or  
 680 through them, from any and all claims, losses or demands, including, but not limited to, personal injury and property dam-  
 681 age and all of the consequences thereof, whether known or not, which may arise from the presence of termites or other wood-  
 682 boring insects, radon, lead-based paint hazards, mold, fungi or indoor air quality, environmental hazards, any defects in the  
 683 individual on-lot sewage disposal system or deficiencies in the on-site water service system, or any defects or conditions on the  
 684 Property. Should Seller be in default under the terms of this Agreement or in violation of any Seller disclosure law or regula-  
 685 tion, this release does not deprive Buyer of any right to pursue any remedies that may be available under law or equity. This  
 686 release will survive settlement.  
 687 29. REAL ESTATE RECOVERY FUND (9-05)  
 688 A Real Estate Recovery Fund exists to reimburse any persons who have obtained a final civil judgment against a Pennsylvania real  
 689 estate licensee (or a licensee's affiliates) owing to fraud, misrepresentation, or deceit in a real estate transaction and who have been  
 690 unable to collect the judgment after exhausting all legal and equitable remedies. For complete details about the Fund, call (717) 783-  
 691 3658 or (800) 822-2113 (within Pennsylvania) and (717) 783-4854 (outside Pennsylvania).  
 692 30. COMMUNICATIONS WITH BUYER AND/OR SELLER (1-10)  
 693 Wherever this Agreement contains a provision that requires or allows communication/delivery to a Buyer, that provision shall be  
 694 satisfied by communication/delivery to the Broker for Buyer, if any, except for documents required to be delivered pursuant to  
 695 Paragraph 16. If there is no Broker for Buyer, those provisions may be satisfied only by communication/delivery being made  
 696 directly to the Buyer, unless otherwise agreed to by the parties. Wherever this Agreement contains a provision that requires or allows

697 Buyer Initials: Ref

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Seller Initials: JP

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Perkins

698 communication/delivery to a Seller, that provision shall be satisfied by communication/delivery to the Broker for Seller, if any. If  
 699 there is no Broker for Seller, those provisions may be satisfied only by communication/delivery being made directly to the Seller,  
 700 unless otherwise agreed to by the parties.

701 **31. HEADINGS (4-14)**

702 The section and paragraph headings in this Agreement are for convenience only and are not intended to indicate all of the mat-  
 703 ter in the sections which follow them. They shall have no effect whatsoever in determining the rights, obligations or intent of  
 704 the parties.

705 **32. SPECIAL CLAUSES (1-10)**

706 (A) The following are attached to and made part of this Agreement if checked:

- 707 ☐ Sale & Settlement of Other Property Contingency Addendum (PAR Form SSP)  
 708 ☐ Sale & Settlement of Other Property Contingency with Right to Continue Marketing Addendum (PAR Form SSPCM)  
 709 ☐ Sale & Settlement of Other Property Contingency with Timed Kickout Addendum (PAR Form SSPTKO)  
 710 ☐ Settlement of Other Property Contingency Addendum (PAR Form SOP)  
 711 ☐ Appraisal Contingency Addendum (PAR Form ACA)  
 712 ☐ Short Sale Addendum (PAR Form SHS)  
 713 ☐ there is no addendum to this agreement of sale

714 ☐

715 ☐

716 (B) Additional Terms: i-Buyer will provide proof of funds to seller within 5 business days  
 717 of execution of agreement of sale.

718 ii-Seller will provide Buyer with builder warranty within 5 business  
 719 days of execution for Buyer review.

720

721

722

723

724 Buyer and Seller acknowledge receipt of a copy of this Agreement at the time of signing.

725 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and which coun-  
 726 terparts together shall constitute one and the same Agreement of the Parties.

727 **NOTICE TO PARTIES: WHEN SIGNED, THIS AGREEMENT IS A BINDING CONTRACT.** Parties to this transaction are  
 728 advised to consult a Pennsylvania real estate attorney before signing if they desire legal advice.

729 Return of this Agreement, and any addenda and amendments, including return by electronic transmission, bearing the signatures  
 730 of all parties, constitutes acceptance by the parties.

731        /        Buyer has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code §35.336.

732        /        Buyer has received a statement of Buyer's estimated closing costs before signing this Agreement.

733        /        Buyer has received the Deposit Money Notice (for cooperative sales when Broker for Seller is holding deposit  
 734 money) before signing this Agreement.

735        /        Buyer has received the Lead-Based Paint Hazards Disclosure, which is attached to this Agreement of Sale. Buyer  
 736 has received the pamphlet Protect Your Family from Lead in Your Home (for properties built prior to 1978).

737 BUYER David Ferreira or assignee DATE 11/11/2014

738 BUYER \_\_\_\_\_ DATE \_\_\_\_\_

739 BUYER \_\_\_\_\_ DATE \_\_\_\_\_

740 Seller has received the Consumer Notice as adopted by the State Real Estate Commission at 49 Pa. Code § 35.336.

741 Seller has received a statement of Seller's estimated closing costs before signing this Agreement.

742 SELLER 200 Christian Street Partners DATE 11/11/2014

743 SELLER \_\_\_\_\_ DATE \_\_\_\_\_

744 SELLER \_\_\_\_\_ DATE \_\_\_\_\_

## **Exhibit “C”**

**ADDENDUM 2; PUNCH LIST**

Addendum to contract dated October 28, 2014 between:  
200 Christian Street Partners (Sellers) and  
David Ferreira or assignee (Buyers) on property located  
 at 501A S 12th Street, Philadelphia, PA 19147

PUNCH LIST ; seller agrees to address all items listed prior to settlement

- 1.house to be professionally cleaned
  - 2.clean all vents/ductwork (full of dust & debris)
  - 3.touch up paint as needed ex. hand prints/etc. - all rooms/locations/trim
- 1st floor
- 4.main front door- inside baseboard remove white marks
  - 5.remove paint on on/off switch at top of basement stairs
  - 6.clean cobweb ceiling
  - 7.ceiling edge paint touch up
  - 8.trim touch up in utility closet with sump pump
  - 9.front closet door top; fix magnet/door catch
- Bathroom
- 1.fix paint on floor/ toilet/vanity top. touch up light switch, fix drips on light about vanity.
- backroom
- 1.address odor in closet closest to operating HVAC
- Garage
- 1.paint and clean entrance door and walls in closet (south west wall)
  - 2.tidy/paint entry lighting at ceiling
- Stairwell to 2nd floor-
1. touch up paint walls, steps and landing
  2. black marks on flooring
- 2nd floor
1. clean off counter tops
  2. clean off pencil marks on counters
  3. clean up and touch up base of sliding glass doors to porch
  4. Lombard St window (lower right window lock)
  5. fix cracking paint from wall to ceiling
  - 6.
- touch up paint on all outlets
- 3rd floor
- 1.small linen closet on south side of entrance hall, adjust door catch
  - 2.re-paint ceiling
    - a.repair work done on ceiling due to water leak
    - b.cracking noted along east wall at ceiling -entire length
  3. repair window lock set at corner lower window
- Hallway- clean black marks on flooring
- Corner bathroom (2nd bedroom) - fix broken window
- Laundry room- clean all counter tops
- Top deck-
1. water pooling top of parapet wall out to right of slider-John K has photo
  2. same corner re-secure deck at corner
  3. note:water seen pooling in gap outside exterior base of sliders underneath deck
  4. slider lock needs adjustment- not functioning properly

Initials: 

12/5/14

Initials: \_\_\_\_\_ / \_\_\_\_\_

## **Exhibit “D”**





## **Exhibit “E”**



Rimkus Consulting Group, Inc.  
3620 Horizon Drive, Suite 200  
King of Prussia, PA 19406  
(888) 623-1460 Telephone  
(610) 941-1288 Facsimile

September 12, 2016

Peter Bryant, Esquire  
Bochetto & Lentz, P.C.  
1524 Locust Street  
Philadelphia, Pennsylvania 19102

Re: Insured: David Ferreira (Self Insured)  
Subject: **Report of Conclusions**  
RCG File No: 47702110

Dear Mr. Bryant:

On July 23, 2015, it was reported by Mr. David Ferreira that immediately after he and his family moved into their residence in 2015, moisture intrusion occurred and subsequently caused damage to his residence. The Ferreira residence was located at 501A South 12th Street in Philadelphia, Pennsylvania (the Residence).

Rimkus Consulting Group, Inc. was retained to evaluate the reported damage, and to determine if there were any construction defects that affected the damage, caused poor building performance, or increased the risks for development of life-safety issues. This report was reviewed by Mr. Benjamin T. Irwin, District Manager.

In the course of our work, we completed the tasks outlined in the attached **Basis of Report**.

### **Conclusions**

1. The following construction defects observed at the Ferreira residence were not in compliance with the reference portions of the permit drawings and/or the applicable building codes and/or industry standards:
  - A. Insufficient foundation wall height and untreated wood framing located too close to grade level: Wall Section 2 on Drawing Sheet A-4.1, and IRC Sections R404.1.6 and R317.1.2.5.
  - B. Improper drainage system behind the brick veneer: 2009 International Residential Code (IRC) Section R703.1.1.

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- C. Lack of and/or inadequate flashing in at least eight differing location types throughout the building: Weather Barriers and Flashing Notes on Drawing Sheet CS.0, Wall Sections on Drawing Sheets A-4.0 and A-4.1, and IRC Sections R703.7.5, R703.7.6, R703.8 and R708.8.
  - D. Insufficient wall cavity thickness in the brick veneer: Partition Type P1, sheet A-0.0 and IRC Section R703.7.4.2.
  - E. Insufficient insulation and/or air barrier below the cupped wood flooring in the rear second-floor living room above the unheated garage. IRC N1102.4.7.
  - F. Improper wood support of the fourth-floor brick veneer above the third-floor rear bedroom, in lieu of a steel angle: Detail 1 on Drawing Sheet A-6.4 and IRC Section R703.7.2.2.
  - G. Improper attachment/embedment of the sheet metal masonry ties within the brick veneer: Building Code Requirements for Masonry Structures, (ACI 530-05/ASCE 5-05/TMS 402-05) Section 6.2.2.6.2 and IRC Section R703.7.4.
  - H. Lack of relief angles for the upper portions of the brick veneer: Detail 2 on Drawing Sheet A-4.2 and IRC Table R703.7(1).
2. Conditions A through D above permitted moisture intrusion through the exterior building envelope, causing moisture entrapment with the exterior wall cavities and corresponding moisture and/or mold-related damage to the adjacent wood sheathing and interior finishes. Open gaps and voids in the metal coping joints, exterior metal cladding systems, around the windows, at the interfaces between these systems, and at the interfaces adjacent to the brick veneer, also contributed to the moisture intrusion and related interior damage. These conditions represented on-going building performance issues that are expected to worsen with time.
  3. Conditions A and F through H above were structural issues, which will affect the long term performance of the building. Additional structural issues, such as moisture-and/or mold-related damage to the structural components of the building should be anticipated with time, as conditions continue to progressively deteriorate. Such premature deterioration is already evident in the delaminated parallam beam formerly supporting the brickwork above the third-floor bedroom. This condition requires remedial action as the beam has already experienced a structural strength reduction from its design capacity.
  4. Progressive deterioration involving seasonal freeze-thaw cycling of water entrapped within the exterior walls is anticipated to further weaken the deficient brick veneer ties, and will eventually lead to veneer detachment and collapse. This condition



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Page 3

represents a future life safety risk, if it is not remediated. There is currently one area of premature minor bulging present on the building.

5. Remedial actions are required to correct the construction defects, address the building envelope and structural performance issues, to mitigate the risks for the development of future life safety hazards, and to provide a constructed building that is compliant with the permit drawings and the applicable codes. Such remedial actions will require the services of qualified design professionals registered in the Commonwealth of Pennsylvania.

This requested short report contains the conclusions of our examination findings and does not contain a complete discussion of the investigative steps and analysis we undertook in order to formulate our conclusions. If an explanation of the conclusions is needed at a later date, at your request, a detailed report of findings can be completed.

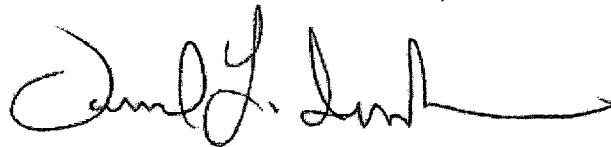
Photographs taken during our work are retained in our files and are available to you upon request.

This report was prepared for the exclusive use of Bochetto & Lentz, P.C. and was not intended for any other purpose. Our report was based on the information available to us at this time. Should additional information become available, we reserve the right to determine the impact, if any, the new information may have on our opinions and conclusions and to revise our opinions and conclusions if necessary and warranted.

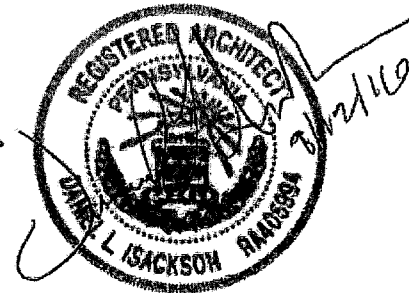
Thank you for allowing us to provide this service. If you have any questions or need additional assistance, please call.

**THE ORIGINAL OF THIS REPORT, SIGNED AND SEALED BY THE PROFESSIONAL WHOSE NAME APPEARS ON THIS PAGE, IS RETAINED IN THE FILES OF RIMKUS CONSULTING GROUP, INC.**

Sincerely,  
RIMKUS CONSULTING GROUP, INC.



Daniel L. Isackson, AIA, LEED AP  
PA Licensed Architect No. RA405994  
District Manager



Attachments: Basis of Report, CV

September 12, 2016  
RCG File No. 47702110

## **Basis of Report**

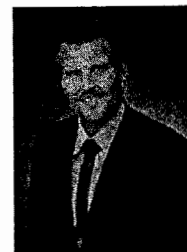
1. Mr. Anthony Volonnino, P.E. inspected and photographed the Residence on August 11, 2016.
2. Mr. Daniel L. Isackson, AIA, LEED AP inspected and photographed the Residence on August 18 and 26, 2016.
3. Mr. Frank E Hendron, CFC, CMC, MS, PhD was interviewed during the site visit on August 18, 29016, by Daniel L. Isackson, AIA, LEED AP.
4. Documents:
  - a) The *Resident Condition Study*, dated July 23, 2015, published by Worldwide Engineering Service and Training.
  - b) The *Moisture Intrusion Evaluation* report, November 19, 2015, published by the Shield and Compass Agency.
  - c) *Synopsis of Findings and Recommendations*, January 16, 2016, published by Northeast Inspection Corporation.
  - d) The Northeast Inspection field notes for the exterior wall readings.
  - e) 501-7 South 12th Street, Philadelphia, Pennsylvania 19147 Building Permit Submission drawings, dated June 18, 2013, published by Harman Deutsch Architects.
  - f) The City of Philadelphia Building Code.
  - g) 2009 International Residential Code published by the International Code Council.
  - h) *Building Code Requirements for Masonry Structures* (ACI 530-05/ASCE 5-05/TMS 402-05) published by the Masonry Standards Joint Committee.

September 12, 2016  
RCG File No. 47702110



**CV**





**DANIEL L. ISACKSON, R.A, LEED AP BD+C  
DISTRICT MANAGER**

Mr. Isackson is a 1990 graduate from the University of Minnesota with a Bachelor of Architecture Degree and Bachelor of Environmental Design Degree (1988). He is a registered professional Architect with extensive experience in all phases of architecture, including preliminary design, construction documents, specifications, and contract/construction administration. His experience incorporates a broad range of skills including design, code analysis, project management, programming, site development, and cost estimating.

Mr. Isackson's past project types include commercial, multi-family residential, retail, educational, airport terminals, military facilities, mixed use urban development, historic renovation, and adaptive reuse. He has experience with building code compliance and life safety analysis, accessibility standards, and property condition assessments.

Currently, at Rimkus Consulting Group, Mr. Isackson is responsible for inspections and analysis of construction defects, storm damage, failures in building envelopes, building code and ADA accessibility code compliance, and premise liability evaluations in relation to falls, means of egress, slip-and-fall and trip-and-fall claims. Mr. Isackson is experienced with the Brungraber Mk 1 Articulated Strut Tribometer and the English XL Variable Incident Tribometer slip resistance meters. These inspections encompass commercial, residential, civic, religious, hospitality and multi-residential building types for construction claims and property claims and includes moisture intrusions, building envelope failures, brick veneer, stone veneer, stucco, residential and commercial plumbing failures, pipe freeze investigations, and window wall system and component deficiencies and failures. He has also provided expert witness testimony in arbitration, deposition, and trial.

**EDUCATION AND PROFESSIONAL ASSOCIATIONS**

B.A. – Architecture, University of Minnesota, Minneapolis  
B.E.D. – Environmental Design, University of Minnesota, Minneapolis  
Registered Professional Architect (RA) licensed in Maryland, District of Columbia, Virginia, Pennsylvania, Delaware, New York, New Jersey, West Virginia, North Carolina, South Carolina, Ohio, Georgia, Massachusetts and Texas.  
Leadership in Energy and Environmental Design Accredited Professional (LEED AP BD+C) -  
USGBC with specialty in Building Design and Construction  
American Institute of Architects (AIA) – Member  
National Council of Architectural Registration Boards (NCARB) – Member  
Rimkus Training: Low Slope and Steep Slope Roofing  
English XL Variable Incidence Tribometer Certified

**EMPLOYMENT HISTORY**

2012 – Present	Rimkus Consulting Group, Inc.
2006 – 2012	Kann Partners, Baltimore, MD
2004 – 2006	URS Corporation, Hunt Valley, MD
1989 – 2004	Kann and Associates, Inc., Baltimore, MD

**DANIEL L. ISACKSON, R.A, LEED AP BD+C**

1988 – 1988                      Design International, Inc., Baltimore, MD  
1986 – 1987                      Rust Architects, White Bear Lake, MN

**DETAILED PROFESSIONAL EXPERIENCE:**

**RIMKUS CONSULTING GROUP, INC.**

**2012 - PRESENT**

District Manager

In charge of office operations and personnel in the Baltimore office. Responsible for investigating and evaluating commercial and residential structures to determine the cause and origin of design and construction defects. Verify construction compliance with contract documents, industry standards, building codes, and ADA accessibility standards.

**Kann Partners**

**2006 – 2012**

Associate Principal, Senior Project Manager

Responsible for design, development, production of documents, and construction administration of commercial, retail, educational, historic renovation, and multi-family residential projects. Reviewed all projects for code compliance and assisted with project budgets and feasibility studies. Key projects included a 10 story concrete framed multi-family building, natatorium, renovation of a closed public school into a charter school, and historic renovation projects in Cumberland, MD and Baltimore City.

**URS Corporation**

**2004 – 2006**

Senior Project Architect

Responsible for design, development, and production of documents of airport and military Projects. Reviewed all projects for code compliance, and quality control. Reviewed military projects for compliance with Anti-terrorist Force Protection Standards and Unified Facility Criteria. Key projects included redesign of an airport terminal for the A380 Airbus, military administration building, military security entry gates, and property condition assessments.

**Kann and Associates, Inc.**

**1989 - 2004**

Associate Principal, Project Manager

Responsible for design, development, production of documents, and construction administration of commercial, historic renovation, structured parking, and multi-family residential projects. Reviewed all projects for code compliance and assisted with project budgets. Key projects included a mixed use urban development project in Baltimore City, and retail development in Baltimore, D.C, Virginia, and Pennsylvania. The mixed use project included, concrete post-tension framed 17-story residential tower and 6-story concrete post-tension framed structured parking facility. The retail projects were primarily steel framed.

**Design International, Inc.**

**1988 - 1988**

Intern Architect

Responsible for drafting, model making and presentation preparation for retail projects. Key projects included retail shopping centers.

**DANIEL L. ISACKSON, R.A., LEED AP BD+C**

**Rust Architects**

**1986 - 1987**

Intern Architect

Responsible for drafting and model making for residential projects.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILO, LLC

v.

VIRGIL PROCACCINO,  
ARTHUR ELWOOD, and  
200 CHRISTIAN STREET PARTNERS

Civil Action No.: 2:16-cv-5759-RBS

CERTIFICATE OF SERVICE

I, Peter R. Bryant, Esquire, caused a true and correct copy of the *First Amended Complaint* to be served upon the following via first class mail and email:

Roy S. Cohen, Esquire  
Cohan, Seglias, Pallas, Greenhall & Furman, P.C.  
30 South 17<sup>th</sup> Street, 19<sup>th</sup> Floor  
Philadelphia, PA 19103  
rcohen@cohenseglias.com

Robert J. Cosgrove, Esquire  
Melanie Brother, Esquire  
Wade Clark Mulcahy  
1515 Market Street, Suite 2050  
Philadelphia, PA 19102  
mbrother@wcmlaw.com; rcosgrove@wcmlaw.com

Date: January 30, 2017

  
Peter R. Bryant

# EXHIBIT B

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**MILO, LLC,**

**v.**

**VIRGIL PROCACCINO, ARTHUR ELWOOD, :  
And 200 CHRISTIAN STREET PARTNERS :**

C.A. No. 2:16-cv-05759-RBS

**JOINDER COMPLAINT OF DEFENDANTS  
VIRGIL PROCACCINO, ARTHUR ELWOOD, AND 200 CHRISTIAN  
STREET PARTNERS PURSUANT TO FED. R. CIV. P. 20(a)(2)**

Defendants Virgil Procaccino, Arthur Elwood, and 200 Christian Street Partners (collectively “200 CSP”) make the following joinder complaint to join AB Construction LLC, Duggan Excavation, E&A Drywall Corp., High End Design Inc., Jeld-Wen, Inc., Maxi-Tech Inc., Red Lion Insulation, Stanley Stephens Co., Inc., and Tague Lumber as third-party defendants in the above-captioned action. In support of this complaint, 200 CSP avers the following:

**I. Nature of the Action**

1. Milo LLC (“Milo”) initiated this action against 200 CSP in November 2016. (*See* Pls.’ Compl. (“ECF 1”).)

2. In January 2017, Milo filed an amended complaint, alleging several counts related to the construction and sale of a home located at 501A South 12th Street, Philadelphia, Pennsylvania 19147 (the “Home”) that Milo purchased from 200 CSP. (*See* Pls.’ Am. Compl. (“ECF 12”) ¶ 33).

3. Milo claims that 200 CSP made various mistakes with respect to the Home and the remediation efforts that were undertaken after discovering leaks and water infiltration issues. (*See* ECF 12).

4. With respect to the work that was done at the Home, all construction materials were supplied by the Joinder Defendants.

5. Similarly, all construction work at the Home was performed by the Joinder Defendants, not by 200 CSP.

## **II. Parties**

6. Milo LLC, the record owner of the Home, is a limited liability company formed in Delaware and has a registered office at 1600 Greentree Drive, Suite 101, Dover, Delaware 19904.

7. 200 Christian Street Partners is a limited liability company formed under Pennsylvania law.

8. Virgil Procaccino is an individual and a partner in 200 Christian Street Partners.

9. Arthur Elwood is an individual and a partner in 200 Christian Street Partners.

10. Joinder Defendants:

a. AB Construction LLC is a limited liability corporation registered to do business in Pennsylvania and has a registered business address at 11614 Proctor Place, Philadelphia, Pennsylvania 19116.

b. Duggan Excavation is a Pennsylvania, non-stock corporation with registered business addresses at 446 Cedarwood Lane, Elkins Park, Pennsylvania 19027 and/or 1804 Afton Street, Philadelphia, Pennsylvania 19111.

c. E&A Drywall Corporation is a New Jersey domestic profit corporation with a registered business address at 220-246 North 38th Street, Camden, New Jersey 08105.



d. High End Design Inc. is a Pennsylvania limited liability company with a registered business address at 2840 Pine Road, Unit A3, Huntingdon Valley, Pennsylvania 19006.

e. Jeld-Wen, Inc. is a public corporation that does business in Pennsylvania at 1162 Keystone Boulevard, Pottsville, Pennsylvania 17901.

f. Maxi-Tech Inc. is a Pennsylvania corporation with a registered business address at 3345 Ashville Street, Philadelphia, Pennsylvania 19136.

g. Red Lion Insulation has a registered business address at 66 E. Gloucester Pike, Barrington, New Jersey 08007-1323.

h. Tague Lumber is a Pennsylvania corporation with a registered business address at 325 Media Station Road, Media, Pennsylvania 19063.

i. Stanley Stephens Co., Inc. is a Pennsylvania corporation with a registered business address at 2565 Pearl Buck Road, Bristol, Pennsylvania 19007.

### **III. Jurisdiction**

11. This Honorable Court may exercise both general and specific personal jurisdiction over joinder defendants AB Construction LLC, Duggan Excavation, Maxi-Tech Inc., Stanley Stephens Co., Inc., High End Design Inc., Jeld-Wen, Inc., and Tague Lumber.

12. This Honorable Court has specific personal jurisdiction over joinder defendants E&A Drywall Corporation and Red Lion Insulation.

13. Complete diversity exists between Milo and 200 CSP, and the amount in controversy exceeds \$75,000.

14. Thus, this Honorable Court has original jurisdiction over Milo's claims against 200 CSP. *See* 28 U.S.C. § 1332 (2012).

15. Therefore, this Honorable Court may also exercise supplemental jurisdiction over 200 CSP's claims against the joinder defendants. *See id.* § 1367(a).

16. Section 1367(a) grants federal district courts supplemental jurisdiction over all claims that are so related to the claims in the action over which the district court has original jurisdiction that they form part of the case or controversy. *See id.*

17. Claims form part of the case or controversy when they arise from a “‘common nucleus of operative fact’ and would ordinarily be expected to be tried together.” *See Mars Inc. v. Kabushiki-Kaisha Nippon Conlux*, 24 F.3d 1368, 1374 (3d Cir. 1994) (quoting *Utd. Mine Works of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)).

18. 200 CSP's claims against the joinder defendants arise from the same transactions and occurrences as Milo's claims against 200 CSP, *e.g.*, the alleged deficiencies in the construction of the Home and resulting damages.

19. Accordingly, this Honorable Court has subject matter jurisdiction over 200 CSP's claims against the joinder defendants.

#### **IV. Venue**

20. Venue is proper in the Eastern District of Pennsylvania because the events giving rise to this action occurred here and a “substantial part of property that is the subject of the action is situated,” specifically 501A South 12th Street, Philadelphia, Pennsylvania 19147. *See* 28 U.S.C. § 1391(b)(2) (2012).

#### **V. Common Facts**

21. AB Construction LLC, by and through its agents, performed work, including, but not limited to, the installation of brick walls on the exterior of the Home. *See* AB Construction LLC Invoice (“**Exhibit A**”).

22. Duggan Excavation, by and through its agents, performed work, including, but not limited to, excavating and pouring the foundation of the Home. *See* Duggan Excavation Invoice (“**Exhibit B**”).

23. E&A Drywall Corporation, by and through its agents, performed work, including, but not limited to, the installation of windows, doors, sheeting, and molding at the Home. *See* E&A Drywall Corporation Proposal (“**Exhibit C**”).

24. High End Design Inc., by and through its agents, performed work, including, but not limited to, the installation of aluminum composite and two layers of moisture barrier at the Home. *See* High End Design Inc. Invoice (“**Exhibit D**”).

25. Jeld-Wen, Inc., by and through its agents, manufactured windows and sold them to Tague Lumber Company that were used in the construction of the Home. *See* Tague Lumber Invoice (“**Exhibit E**”).

26. Maxi-Tech Inc., by and through its agents, performed the installation of the roof on the Home. *See* Maxi-Tech Inc. Invoice (“**Exhibit F**”).

27. Red Lion Insulation installed insulation at the Home. *See* Red Lion Work Agreement (“**Exhibit G**”).

28. Tague Lumber, by and through its agents, sold defective windows and building materials that were used in the construction of the Home. *See* **Exhibit E**.

29. Stanley Stevens Co., Inc. manufactured and distributed hardwood flooring, which was installed at the Home. *See* Stanley Stephens Co., Inc. Invoice (“**Exhibit H**”).

**COUNT I—COMMON LAW INDEMNIFICATION**  
**200 CSP V. ALL JOINDER DEFENDANTS**

30. 200 CSP repeat and reiterate each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “29” inclusive, with the same force and effect as if set forth here more particularly at length.

31. If damages were sustained as alleged by Milo, it was solely because of the negligence, carelessness, and intentional acts or omissions of the joinder defendants and joinder defendants’ agents, servants, and/or employees in performing work at the Home.

32. If judgment or settlement is recovered by Milo, such recovery will have come about solely because of the negligence, carelessness, and intentional acts or omissions of the joinder defendants and not any negligence, carelessness, or intentional acts or omissions by 200 CSP.

33. As such, 200 CSP are entitled to common law indemnity from the joinder defendants.

**COUNT II—CONTRIBUTION**  
**200 CSP V. ALL JOINDER DEFENDANTS**

34. 200 CSP repeat and reiterate each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “33” inclusive, with the same force and effect as if set forth here more particularly at length.

35. In the alternative, while denying any liability on 200 CSP’s part, should Milo recover damages in this action, the joinder defendants are liable over to 200 CSP for contribution of any monies that 200 CSP may be found liable or responsible to Milo.

**COUNT III—NEGLIGENCE**  
**200 CSP V. ALL JOINDER DEFENDANTS**

36. 200 CSP repeats and reiterates each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “35” inclusive, with the same force and effect as if set forth here more particularly at length.

37. The joinder defendants all either performed work at the Home or supplied materials used in the construction of the Home.

38. To the extent that Milo suffered the injuries and damages as alleged, said injuries and damages were caused in whole or in part because of the joinder defendants’ negligent performance of their work.

39. The joinder defendants were negligent in the following respects:

- a. Failing to comply with industry standards;
- b. Failing to comply with applicable building codes;
- c. Failing to perform their work in a reasonable and workmanlike manner;
- d. Failing to follow manufacturers’ specifications and guidelines regarding the use, construction and installation of products and components in the Home; and
- e. Utilizing defective products in the installation of components and/or construction of the Home.

40. 200 CSP denies any and all liability for the claims asserted by Milo.

41. But if, upon adjudication of Milo’s cause of action, it is determined that any of the work involving the construction of the Home or products used therein were defective or were improperly performed and, in some way, caused Milo’s damages, the joinder defendants are liable for negligence, and 200 CSP seek all damages flowing from that negligence.



**COUNT IV—BREACH OF IMPLIED  
WARRANTY OF FITNESS FOR ORDINARY PURPOSE  
200 CSP V. TAGUE LUMBER AND JELD-WEN, INC.**

42. 200 CSP repeats and reiterates each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “41” inclusive, with the same force and effect as if set forth here more particularly at length.

43. Tague Lumber is engaged in the business of selling and/or distributing windows and/or window components.

44. Jeld-Wen, Inc. (“Jeld-Wen”) is engaged in the business of manufacturing, selling, and distributing windows and/or window components.

45. Tague Lumber’s and Jeld-Wen’s products constitute “goods” under the Pennsylvania Uniform Commercial Code.

46. Tague Lumber’s and Jeld-Wen’s products are provided with implied warranties of merchantability and fitness for a particular purpose.

47. The defects in the Jeld-Wen windows and window components, which were sold and distributed by Tague Lumber as set forth herein, constitute breaches of said implied warranties.

48. 200 CSP deny any and all liability for the claims asserted by Milo.

49. But if, upon adjudication of Milo’s cause of action, it is determined that Milo sustained damages to the Home, Tague Lumber’s breach of their implied warranties of merchantability and fitness for a particular purpose caused and/or contributed to the aforementioned damages, and 200 Christian Street Defendants seek all damages flowing from that breach.

**COUNT V—STRICT PRODUCTS LIABILITY**  
**200 CSP V. JELD WEN, INC.**

50. 200 CSP repeats and reiterates each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “49” inclusive, with the same force and effect as if set forth here more particularly at length.

51. Jeld-Wen designed and manufactured the windows and window components, which were, upon information and belief, installed at the Home.

52. Jeld-Wen is engaged in the business of selling and/or distributing windows and window related components.

53. The windows and window components are “products” for purposes of § 402A of the Restatement (Second) of Torts.

54. Jeld-Wen sold said windows and window components in a defective and unreasonably dangerous condition.

55. Said defects include the following:

- a. Failing to properly caulk and seal the windows and window components;
- b. Failing to manufacture the windows and window components consistent with design plans;
- c. Utilizing inferior components, parts and materials in the construction of the windows and window components; and
- d. Failing to ensure that the windows and window components were properly sealed to prevent moisture infiltration.

56. 200 CSP denies any and all liability for the claims asserted by Milo.

57. But if, upon adjudication of Milo’s cause of action, it is determined that Milo sustained damages to the Home, the defects in the Jeld-Wen windows and window components

caused and/or contributed to the aforementioned damages, and 200 CSP seek all damages flowing from those product defects.

**WHEREFORE**, 200 CSP respectfully requests judgment in its favor and against all other parties together with any such other, further and different relief that this Honorable Court deems just and proper.

Dated: May 2, 2018  
Philadelphia, PA

WADE CLARK MULCAHY LLP

*/s/ Robert J. Cosgrove*

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Robert J. Cosgrove, Esq.

*/s/ Alexandra M. Perry*

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Alexandra M. Perry, Esq.

# EXHIBIT C

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Philadelphia, PA 19102  
(267) 239-5526 (Phone)  
Our File No.: 812.10562

**NOTICE TO PLEAD**

To: Joinder Defendants

You are hereby notified to file a written response to the enclosed Amended Joinder Complaint within twenty (20) days from service hereof or a judgment may be entered against you.

Attorneys for 200 Christian Street  
Partners, LLC, Virgil Procaccino,  
Arthur Elwood

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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA, PENNSYLVANIA  
CIVIL TRIAL DIVISION

ZACHARY KLEHR and  
DEBORAH KLEHR,  
  
Plaintiffs,

v.

200 CHRISTIAN STREET PARTNERS, LLC  
*et al.*,

Defendants.

SEPTEMBER TERM, 2017

Case No.: 02547

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200 CHRISTIAN STREET PARTNERS, LLC,  
VIRGIL PROCACCINO and ARTHUR  
ELWOOD,

Joinder Plaintiffs,

v.

AB CONSTRUCTION, LLC, TIR EOGHAIN  
CONSTR., INC. D/B/A DUGGAN EXCAVATION:  
E&A DRYWALL CORPORATION, HIGH END  
DESIGN, INSTALLATIONS, LLC, JELD WEN  
WINDOWS AND DOORS, MAXI-TECH  
ROOFING, INC, PHILLY BRICK AND STONE  
RESTORATION, LLC, TAGUE LUMBER  
OF MEDIA, INC. and STRAWBRIDGE CROWE :



LLC T/A J MALONEY & SON :  
:  
Joinder Defendants :  
:  
\_\_\_\_\_ :

**AMENDED JOINDER COMPLAINT OF DEFENDANT 200 CHRISTIAN STREET PARTNERS, LLC DIRECTED TO ADDITIONAL DEFENDANTS ---- AB CONSTRUCTION, LLC; TIR EOGHAIN CONSTRUCTION, INC. D/B/A DUGGAN EXCAVATION; E&A DRYWALL CORPORATION; HIGH END DESIGN INSTALLATIONS, LLC; JELD WEN WINDOWS AND DOORS; MAXI-TECH ROOFING, INC.; PHILLY BRICK AND STONE RESTORATION, LLC; TAGUE LUMBER OF MEDIA, INC. AND J. MALONEY & SON, LLC**

Defendant/joinder plaintiffs, 200 CHRISTIAN STREET PARTNERS, LLC (“200 Christian Street”), VIRGIL PROCACCINO (“Procaccino”) and ARTHUR ELWOOD (“Elwood”) (collectively “200 Christian Street Defendants”), by and through their attorneys, Wade Clark Mulcahy, hereby incorporate their answer to plaintiffs’ Zachary Klehr (“Z. Klehr”) and Deborah Klehr (“D. Klehr”) (collectively “Klehr”) amended complaint, as fully as though the same were set forth at length herein, and file the within amended joinder complaint against additional defendants AB Construction LLC (“AB Construction”), TIR Eoghain Construction, Inc. d/b/a Duggan Excavation (“Duggan Excavation”), E & A Drywall Corporation (“E&A Drywall”), High End Design Installations, LLC (“High End Design”), Jeld Wen Windows and Doors (“Jeld Wen”), Maxi-Tech Roofing, Inc. (“Maxi-Tech”), Philly Brick and Stone Restoration, LLC (“Philly Brick and Stone”), Tague Lumber of Media, Inc. (“Tague Lumber”) and Strawbridge Crowe, LLC T/A J. Maloney & Son (“J. Maloney”) (collectively “Joinder Defendants”) and aver as follows:

**THE UNDERLYING ACTION**

*The Claims*

1. On or about December 6, 2017, Klehr filed an amended complaint, in the Pennsylvania Court of Common Pleas, Philadelphia County, against the 200 Christian Street

Defendants and Harman Deutsch Corporation (“Harman Deutsch”). *See* First Amended Complaint, attached hereto as **Exhibit A**.

2. The amended complaint alleges that the 200 Christian Street Defendants negligently built, marketed and sold Klehr a defectively constructed home for \$1,650,000.00. *See* **Exhibit A**, ¶ 1.

3. Specifically, Klehr alleges that after they entered into an Agreement of Construction and Sale with 200 Christian Street for the purchase and construction of their home, located at 507 South 12<sup>th</sup> Street in Philadelphia (“the Home”), they began to experience leaks and water infiltration issues in the Home, resulting in irreparable harm and damage. *See* **Exhibit A**.

4. Klehr claims that 200 Christian Street Defendants made various mistakes in respect of the construction of the Home and the remediation efforts that were undertaken upon discovery of the various leaks and water infiltration issues. *See* **Exhibit A**.

5. In respect of the work that was done at the Home, all construction work was performed or construction materials supplied by the Joinder Defendants and not by 200 Christian Street Defendants.

*The Joinder Defendants*

6. Additional defendant AB Construction is a limited liability corporation registered in Pennsylvania with a registered business address at 11614 Proctor Place, Philadelphia, Pennsylvania 1911.

7. Additional defendant AB Construction, by and through their agents, performed work, including, but not limited to, installation of brick walls on the exterior of the Home. *See* AB Construction Invoice, attached hereto as **Exhibit B**.

8. Additional defendant Duggan Excavation is a Pennsylvania non-stock corporation with a registered business address at 446 Cedarwood Lane, Elkins Park, Pennsylvania 19027 and/or 1804 Afton Street, Philadelphia, Pennsylvania 19111.

9. Additional defendant Duggan Excavation, by and through its agents, performed work including, but not limited to, excavating and pouring the foundation of the Home. *See* Duggan Excavation Invoice, attached hereto as **Exhibit C**.

10. Additional defendant E&A Drywall is a New Jersey domestic profit corporation with a registered business address at 220-246 North 38<sup>th</sup> Street, Camden, New Jersey 08105.

11. Additional defendant E&A Drywall, by and through its agents, performed work including, but not limited to, the installation of windows, doors, sheeting and molding at the Home. *See* E&A Drywall Proposal, attached hereto as **Exhibit D**.

12. Additional defendant High End Design is a Pennsylvania limited liability company with a registered business address at 2840 Pine Road, Unit A3, Huntingdon Valley, Pennsylvania 19006.

13. Additional defendant High End Design, by and through its agents, performed work including, but not limited to the installation of aluminum composite and two layers of moisture barrier at the Home. *See* High End Design Invoice, attached hereto as **Exhibit E**.

14. Additional defendant Jeld Wen is a public corporation which does business in Pennsylvania, at 1162 Keystone Boulevard, Pottsville, Pennsylvania 17901.

15. Additional defendant Jeld Wen, by and through its agents, manufactured windows which were sold to Tague Lumber and used in the construction of the Home. *See* Tague Lumber Invoice, attached hereto as **Exhibit F**.

16. Additional defendant Maxi-Tech is a Pennsylvania corporation with a registered business address at 3345 Ashville Street, Philadelphia, Pennsylvania 19136.

17. Additional defendant Maxi-Tech, by and through its agents, performed the installation of the roof on the Home. *See* Maxi-Tech Roof Invoice, attached hereto as **Exhibit G**.

18. Additional defendant Philly Brick and Stone is a Pennsylvania limited liability company with a registered business address at 9311 James Street, Suite B, Philadelphia, Pennsylvania 19114.

19. Additional defendant Philly Brick and Stone, by and through its agents, installed bricks on the exterior of the Home.

20. Additional defendant Tague Lumber is a Pennsylvania corporation with a registered business addresses at 325 Media Station Road, Media, Pennsylvania 19063.

21. Additional defendant Tague Lumber, by and through its agents, sold defective windows and building materials that were used in the construction of the Home. *See* **Exhibit F**.

22. Additional defendant J. Maloney is a New Jersey limited liability corporation with a registered business address at 3 South Route 73, P.O. Box 329, Cedar Brook, New Jersey 08018.

23. Additional defendant J. Maloney, by and through its agents, installed heating, air conditioning and ductwork in the Home. *See* J. Maloney Proposal, attached hereto as **Exhibit H**.

**COUNT I – COMMON LAW INDEMNIFICATION**  
**200 CHRISTIAN STREET DEFENDANTS V. ALL JOINDER DEFENDANTS**

24. 200 Christian Street Defendants repeat and reiterate each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “23” inclusive, with the same force and effect as if set forth here more particularly at length.

25. If damages were sustained as alleged in the Underlying Action, it was solely because of the negligence, carelessness, and acts or omissions of Joinder Defendants and Joinder Defendants’ agents, servants and/or employees in performing work at the Home.

26. If judgment or settlement is recovered by Klehr for the Underlying Action, such recovery will have come about solely because of the negligence, carelessness and acts or omissions of Joinder Defendants and not any negligence, carelessness and intentional acts or omissions by the 200 Christian Street Defendants. As such, 200 Christian Street Defendants are entitled to common law indemnity from Joinder Defendants.

**COUNT II – CONTRIBUTION**  
**200 CHRISTIAN STREET DEFENDANTS V. ALL JOINDER DEFENDANTS**

27. 200 Christian Street Defendants repeat and reiterate each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “26” inclusive, with the same force and effect as if set forth here more particularly at length.

28. In the alternative, while denying any liability on 200 Christian Street Defendants’ part, should Klehr recover damages in this action, Joinder Defendants are liable over to 200 Christian Street Defendants for contribution of any monies that 200 Christian Street Defendants may be found liable or responsible to Klehr.



**COUNT III – NEGLIGENCE**  
**200 CHRISTIAN STREET DEFENDANTS V. AB CONSTRUCTION,**  
**DUGGAN EXCAVATION, E&A DRYWALL, HIGH END DESIGN, MAXI-**  
**TECH, PHILLY BRICK AND STONE, TAGUE LUMBER, AND J.**  
**MALONEY**

29. 200 Christian Street Defendants repeat and reiterate each and every allegation heretofore made in this joinder complaint in the paragraphs designated “1” through “28” inclusive, with the same force and effect as if set forth here more particularly at length.

30. AB Construction, Duggan Excavation, E&A Drywall, High End Design, Maxi-Tech, Philly Brick and Stone, Tague Lumber, and J. Maloney either performed work at the Home or supplied materials used in the construction of the Home.

31. To the extent that Klehr suffered the injuries and damages as alleged, said injuries and damages were caused in whole or in part because of additional defendant’s AB Construction, Duggan Excavation, E&A Drywall, High End Design, Maxi-Tech, Philly Brick and Stone, Tague Lumber, and J. Maloney negligent performance of their work.

32. Additional defendants joined AB Construction, Duggan Excavation, E&A Drywall, High End Design, Maxi-Tech, Philly Brick and Stone, Tague Lumber, and J. Maloney were negligent in the following respects:

- a. Failing to comply with industry standards;
  - b. Failing to comply with applicable building codes;
  - c. Failing to perform their work in a reasonable and workmanlike manner;
  - d. Failing to follow manufacturers’ specifications and guidelines regarding the use, construction and installation of products and components in the Home;
- and

- e. Utilizing defective products in the installation of components and/or construction of the Home.

33. 200 Christian Street Defendants deny any and all liability for the claims asserted by Klehr, but if upon adjudication of Klehr's cause of action it is determined that any of the work involving the construction of the Home or products used therein were defective or was improperly performed and in some way caused Klehr's damages, it is averred that AB Construction, Duggan Excavation, E&A Drywall, High End Design, Maxi-Tech, Philly Brick and Stone, Tague Lumber, and J. Maloney are liable for negligence and 200 Christian Street Defendants seek all damages flowing from that negligence.

WHEREFORE, 200 Christian Street Defendants respectfully request that this Court enter judgment in its favor, and against all other parties together with any relief that this Court deems just and proper.

Dated: Philadelphia, PA  
August \_\_\_, 2018

WADE CLARK MULCAHY LLP

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Robert J. Cosgrove, Esq.

**VERIFICATION**

I, \_\_\_\_\_, verify that I am authorized to make this verification on behalf of 200 Christian Street Partners, LLC and Virgil Procaccino. The foregoing pleading is true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. relating to unsworn falsification to authorities.

Dated: Philadelphia, PA  
August \_\_, 2018

\_\_\_\_\_  
Virgil Procaccino

**VERIFICATION**

I, \_\_\_\_\_, verify that I am authorized to make this verification on behalf of 200 Christian Street Partners, LLC and Arthur Elwood. The foregoing pleading is true and correct to the best of my knowledge and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S.A. relating to unsworn falsification to authorities.

Dated: Philadelphia, PA  
August \_\_, 2018

\_\_\_\_\_  
Arthur Elwood

# EXHIBIT D

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

ZACHARY KLEHR and DEBORAH KLEHR  
Plaintiffs,

v.

200 CHRISTIAN STREET PARTNERS, LLC, et al.,  
Defendants.

200 CHRISTIAN STREET PARTNERS,  
LLC, VIRGIL PROCACCINO, and  
ARTHUR ELWOOD  
Joinder Plaintiffs,

v.

AB CONSTRUCTION, LLC, TIR EOGHAIN CONSTR.,  
INC. d/b/a DUGGAN EXCAVATION, E&A DRYWALL  
CORPORATION, HIGH END DESIGN,  
INSTALLATIONS, LLC, JELD WEN WINDOWS AND  
DOOR, MAXI-TECH ROOFING, INC., PHILLY  
BRICK AND STONE RESTORATION, LLC,  
TAGUE LUMBER OF MEDIA, INC., and  
STRAWBRIDGE CROWE LLC  
T/A J MALONEY & SON  
Joinder Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

SEPTEMBER TERM 2017  
NO.: 02547

CONTROL NO.: 18032704

**ORDER**

AND NOW, this <sup>16</sup> day of August, 2018, upon consideration of the Preliminary Objections of Joinder Defendant, JELD-WEN, Inc., and Joinder Plaintiffs' response thereto, this Court finding that Paragraphs 25, 26, and 45 of Joinder Plaintiff's Joinder Complaint contain scandalous and impertinent allegations, it is hereby **ORDERED** and **DECREED** that Joinder Defendant's Preliminary Objections are **SUSTAINED**. Joinder Plaintiffs are granted leave of twenty (20) days from the docketing of this Order to file an Amended Joinder Complaint.

IT IS FURTHER ORDERED that Counts Three, Four, and Five of Joinder Plaintiffs' Joinder Complaint are hereby **DISMISSED** with prejudice.

Klehr Etal Vs Procaccin-ORDER



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BY THE COURT:

K. SHREEVES-JOHNS, J.